

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

AMANDA BOSARGE, ET AL

PLAINTIFFS

VS.

CIVIL NO. 1:22CV233

DANIEL P. EDNEY, IN HIS OFFICIAL  
CAPACITY AS THE STATE HEALTH  
OFFICER, ET AL

DEFENDANTS

MOTION FOR PRELIMINARY INJUNCTION HEARING

BEFORE THE HONORABLE HALIL S. OZERDEN  
UNITED STATES DISTRICT JUDGE

APRIL, 17, 2022  
GULFPORT, MISSISSIPPI

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1           **THE COURT:** We're here this morning in civil matter  
2 1:22cv233, Amanda Bosarge, et al, versus Daniel P. Edney, in  
3 his official capacity as State Health Officer, et al, scheduled  
4 for a hearing on the plaintiffs' motion for a preliminary  
5 injunction. Would counsel please make their appearances for  
6 the record.

7           **MR. SIRI:** Good morning, Your Honor. Aaron Siri on  
8 behalf of the plaintiffs. I am here with my co-counsel, Chris  
9 Wiest, as well as colleagues, we're at the same firm together,  
10 Walker Moller and Susie Heywood.

11           **THE COURT:** Good morning.

12           **MR. SIRI:** Thank you. Good morning, Your Honor.

13           **MR. SHANNON:** Good morning, Your Honor. I am Rex  
14 Shannon with the Mississippi Attorney General's Office. I am  
15 here with co-counsel, Doug Miracle, on behalf of defendant,  
16 Lynn Fitch in her official capacity as Attorney General of  
17 Mississippi.

18           **THE COURT:** Good morning, Counsel.

19           **MR. MIRACLE:** Good morning, Your Honor.

20           **MR. BENTLEY:** Good morning, Your Honor. Michael  
21 Bentley on behalf of Dr. Daniel Edney, State Health Officer.

22           **THE COURT:** Good morning. Before we get started,  
23 just a couple of, I guess, procedural points I want to make  
24 sure we're clear on. We have one defendant in this case,  
25 Allison Merit, North Bay principal, who it appears to me was

1 served with process but has never appeared. Does anybody have  
2 any update on what's going on with her, what her status is?

3 **MR. SIRI:** Your Honor, we have never received any  
4 communication from any potential counsel or from her. So our  
5 understanding she was properly served and never appeared.

6 **THE COURT:** Anyone have any insight on that?

7 **MR. SHANNON:** Your Honor, we have heard nothing from  
8 anyone claiming to represent her.

9 **MR. BENTLEY:** No, Your Honor.

10 **THE COURT:** And it does appear to me, just to be sure  
11 we're all on the same page, I know there are some other  
12 defendants who are represented by some other counsel, Ashley  
13 Blackmon by a Bryan Nelson firm, and then Ashley Allred and  
14 Doug Tynes. I don't see anyone here for them. Has anyone  
15 heard anything from them? Now, my appreciation was they have  
16 all agreed to be bound by whatever happens, so they probably  
17 don't need to be here, but I want to be sure I am clear on that  
18 or am I missing something?

19 **MR. WIEST:** Yes, Your Honor. So all of the other  
20 defendants have agreed to be bound by whatever ruling Your  
21 Honor issues. The only other party, one was Will Morgan, we  
22 did dismiss. He was represented by a Bethany Tarpley, and so I  
23 think that accounts for all the other defendants, Your Honor.

24 **THE COURT:** Okay. Is that y'all's understanding as  
25 well, counsel?

1           **MR. SHANNON:** That comports with our understanding  
2 Your Honor.

3           **MR. BENTLEY:** Yes, Your Honor.

4           **THE COURT:** All right. We kind of took care of those  
5 housekeeping matters then. As I mentioned at the outset, we're  
6 here on a motion for preliminary injunction. There were some  
7 initial rounds of briefs filed on a number of motions, which  
8 the Court resolved with the exception of this one request. And  
9 after that was done, the Court had a short phone conference  
10 with counsel where I requested some supplemental briefing,  
11 focused solely on the question of preliminary injunction and  
12 the appropriate standard and related facts on those issues.  
13 And I have received that briefing, I have read it, I have  
14 considered it, and we're here today for purposes of this  
15 hearing.

16           So counsel, since it is plaintiffs' burden at this stage,  
17 I will call on you to see if you have any evidence or witnesses  
18 you wish to present on your motion.

19           **MR. WIEST:** We do, Your Honor. And we're going to  
20 present three witnesses this morning. We'd like to start with  
21 Dr. Jeana Stanley.

22           **MR. SHANNON:** Your Honor, at this time the Attorney  
23 General would invoke Rule 615.

24           **THE COURT:** That was my next question. The rule will  
25 be invoked. So any witnesses need to remain outside the

1 courtroom until they are called to testify. Anyone here who is  
2 going to testify needs to wait outside until you are called in.

3 And your first witness, counsel, if you would like, she  
4 may approach up here to the witness stand. If you will come up  
5 here, ma'am. If you would please, I would like you to place  
6 your left hand on the Bible, raise your right hand and take the  
7 oath here.

8 (Oath Administered)

9 **THE COURT:** Please have a seat in the witness box.

10 **MR. WIEST:** Your Honor, would you prefer --

11 **THE COURT:** At the podium, if you would please.

12 Ma'am, you will see a microphone there in front of you. I  
13 need you to speak slowly and speak into it so the court  
14 reporter can hear what you are saying. She also cannot type  
15 two people talking at once, so you need to let the lawyers  
16 finish talking before you start answering. Also, she cannot  
17 type a shake or a nod of the head, or an uh-huh or nuh-uh, so  
18 you must verbalize all answers with a yes or no, do you  
19 understand that?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** Please begin by stating your full name.

22 **WITNESS:** Dr. Jeana Erickson Stanley.

23 **THE COURT:** Counsel, whenever you're ready. For all  
24 of you counsel, just so you are aware, if you need to approach  
25 at some point to hand an exhibit or evidence, fine, just

1 request leave, but do not talk walking back and forth because  
2 these microphones will not pick you up, and the court reporter  
3 won't be able to hear you, all right?

4 **MR. WIEST:** Very good.

5 **THE COURT:** You may proceed.

6 **DR. JEANA ERICKSON STANLEY,**  
7 **having first been duly sworn, testified as follows:**

8 **DIRECT EXAMINATION**

9 **BY MR. WIEST:**

10 Q. Dr. Stanley, where do you live?

11 A. Grand Bay, Alabama.

12 Q. Are you married?

13 A. Yes, sir.

14 Q. How many children do you have?

15 A. I have five children.

16 Q. What are their ages?

17 A. Eight, seven, six and twin three-year-olds.

18 Q. How many of them are in school right now?

19 A. All five of them.

20 Q. I am going to talk about that in some detail in a minute.  
21 Let me just get a little bit more background from you. Where  
22 were you born and raised?

23 A. Biloxi, Mississippi.

24 Q. And did you go to church in Biloxi, Mississippi?

25 A. Yes.



1 Q. Where did you go to church in Biloxi, Mississippi?

2 A. Fatima Catholic Church.

3 Q. Do you still have a home church in Mississippi?

4 A. Yes.

5 Q. Where is that?

6 A. Fatima Catholic Church.

7 Q. You said you live in Alabama. Where do you work?

8 A. I work in Biloxi, Mississippi.

9 Q. Doing what?

10 A. I am a doctor of physical therapy.

11 Q. How long have you been doing that?

12 A. Nine years.

13 Q. How long have you worked in Biloxi, Mississippi?

14 A. All nine years.

15 Q. Where does your husband work?

16 A. In Biloxi, Mississippi, as well.

17 Q. What does he do?

18 A. He is a director of funeral services for Bradford O'Keefe  
19 Funeral Home.

20 Q. How long has he been doing that?

21 A. Ten years.

22 Q. Where is your family or parents located?

23 A. Biloxi, Mississippi.

24 Q. How long have they lived there?

25 A. For at least 50 years.

1 Q. How about your husband's family, where is he from?

2 A. Gulfport, Mississippi.

3 Q. And are his parents also in Gulfport?

4 A. Yes.

5 Q. Do you own real property in Mississippi?

6 A. Yes.

7 Q. Where do you own real property in Mississippi?

8 A. Biloxi, Mississippi.

9 Q. And do you own that house free and clear?

10 A. Yes.

11 Q. You indicated that you own, or I am sorry, that you  
12 currently reside in Grand Bay, Alabama. Do you own that house  
13 free and clear?

14 A. No.

15 Q. Are you paying a mortgage on that?

16 A. Yes.

17 Q. Where are you currently registered to vote?

18 A. I am registered to vote in Mobile County, Alabama.

19 Q. And where is your driver's license?

20 A. Mobile County, Alabama.

21 Q. And that was so you could establish residency there?

22 A. Yes.

23 Q. For your children to be able to attend school there?

24 A. Yes.

25 Q. How about your husband, where is he registered to vote?

1 A. In Harrison County, Biloxi, Mississippi.

2 Q. And where does he have his driver's license?

3 A. In Harrison County, Biloxi, Mississippi.

4 Q. How about your children's friends, where are they located?

5 A. Most of their friends are on the Mississippi Gulf Coast.

6 Q. Do they do any sports or camps in Mississippi?

7 A. Yes.

8 Q. Where?

9 A. They have participated in the Gulfport High School  
10 baseball camps, the Marine Mammal Institute Sea Camps. They go  
11 to Shuckers games and things like that.

12 Q. So that begs the question, why are you currently living in  
13 Alabama?

14 A. The only reason we moved to Alabama was so our children  
15 could attend schools without having to have vaccinations.

16 Q. Have you completed a religious exemption process in  
17 Alabama for the children?

18 A. Yes.

19 Q. And they granted that to you in Alabama?

20 A. Yes.

21 Q. If your children were permitted to attend school with  
22 religious exemption in Mississippi, would you return to  
23 Mississippi and immediately enroll them in school?

24 A. Immediately, yes.

25 Q. And why would you do that?

1 A. Our support system is here on the Mississippi Gulf Coast,  
2 and our jobs, our livelihood is on the Mississippi Gulf Coast  
3 in Biloxi, specifically.

4 Q. By the way, what state do you pay income taxes to?

5 A. Mississippi.

6 Q. And your husband, too?

7 A. Yes.

8 Q. What religion do you associate with?

9 A. We are practicing Catholics.

10 Q. I understand that the defendants are not going to really  
11 contest this, but you and your husband have a sincerely held  
12 religious belief against vaccinating your children?

13 A. Yes.

14 Q. So sincere, in fact, that you have had to move out of the  
15 state, at least temporarily?

16 A. Yes.

17 Q. And has that been a burden on you?

18 A. Absolutely.

19 Q. How has that been a burden on you?

20 A. Financially, emotionally. We're not able to see our  
21 family near as much. We don't have our support system around  
22 us. Just having to move to a new city where we have literally  
23 no one and start our kids in school there when all of our  
24 family is back here.

25 Q. Let me ask, if it came to it would you go to prison rather

1 than vaccinating your children?

2 A. Yes.

3 Q. Mississippi does not have a religious exemption process  
4 like Alabama and almost every other state, right?

5 A. No, it does not.

6 Q. They do allow for medical exemptions?

7 A. Yes.

8 Q. Your children don't not qualify for medical exemption?

9 A. No.

10 Q. How often are you and your husband commuting to and from  
11 Mississippi because of this onerous vaccine requirement?

12 A. Every day, minus weekends, but every day for work.

13 Q. And I know you indicated this, but you're a working parent  
14 and your husband is obviously working, too?

15 A. Yes, sir.

16 Q. Has that put a strain because of the distance from the  
17 grandparents to be able to help you out?

18 A. Yes.

19 Q. How often do the grandparents get to see their  
20 grandchildren because of the fact that you are at least  
21 temporarily located in Alabama?

22 A. Once every few months.

23 Q. By the way, where are you currently -- do you temporarily  
24 attend church anywhere in Alabama?

25 A. Yes.

1 Q. Where?

2 A. St. John the Baptist Catholic Church in Grand Bay,  
3 Alabama.

4 Q. Did your husband used to be able to attend church with the  
5 family when you were living in Mississippi?

6 A. Yes.

7 Q. Just for the record, when did you have to move to Alabama  
8 to enroll your children in school?

9 A. When my oldest turned school age.

10 Q. Which was what year?

11 A. 2017.

12 Q. So before then, you were a permanent resident and citizen  
13 of Alabama?

14 A. Yes, sir.

15 Q. And when that happened, would your husband meet you for  
16 church from work?

17 A. Yes.

18 Q. He would take off for his lunch break?

19 A. Yes.

20 Q. Can't do that anymore?

21 A. He works every third weekend, so on weekends he doesn't  
22 work he is able to attend church with us, but on that third  
23 weekend he is not able to because he can't make the drive back  
24 and forth. He was previously able to do that.

25 Q. Mississippi is your home church?

1 A. Yes.

2 Q. Is that where you do the Christmas and Easter services?

3 A. We did up until a few years back. It just became too  
4 much.

5 Q. Do you still do events with the Mississippi church?

6 A. Yes. Our children were all baptized there.

7 Q. What's been the expense to your family in terms of this  
8 scenario that you are living under right now?

9 A. Mortgage-wise, we could've saved up what I estimated was  
10 approximately \$200,000 in the last six years of living in  
11 Alabama. Just having to pay a mortgage versus not having to  
12 pay one, that's not including the mileage and gas money to  
13 drive each day to and from work for my husband and myself. And  
14 then, obviously, visiting family and friends over here.

15 Q. Has Mississippi's vaccine regime, have you felt a coercive  
16 of pressure to vaccinate your children to reenroll them in  
17 Mississippi?

18 A. Yes.

19 Q. And would you agree that Mississippi has burdened your  
20 religious exercise by putting you to the choice of literally  
21 having to move out of the state?

22 **MR. SHANNON:** Object to the leading, Your Honor.

23 **THE COURT:** Let's rephrase the question.

24 **MR. WIEST:** Certainly, Your Honor.

25 **BY MR. WIEST:**

1 Q. Did you feel coerced to have to move out of the state  
2 because of the vaccine regime?

3 A. Yes.

4 Q. And the alternative to that would be vaccinating your  
5 children?

6 A. Yes.

7 Q. And you weren't going to do that, why?

8 A. I have prayed about this subject for multiple years, and I  
9 have -- I apologize. I have been so convicted to not despite  
10 the trials and tribulations that it's caused our family.

11 Q. Ma'am, are you aware of anyone else besides your family  
12 that's in this situation?

13 A. Yes.

14 Q. How many other folks are in the same situation?

15 A. Multiple.

16 Q. Some of whom are sitting in the audience?

17 A. Yes. Too many to name.

18 **MR. WIEST:** Nothing further, Your Honor.

19 **THE COURT:** Counsel, any cross-examination?

20 **MR. SHANNON:** No, Your Honor. We would reserve any  
21 questions at this time for this witness.

22 **THE COURT:** Any cross?

23 **MR. BENTLEY:** No, Your Honor.

24 **THE COURT:** All right. Can she be excused or is she  
25 subject to recall?



1           **MR. WIEST:** Excused from our perspective, Your Honor.

2           **MR. SHANNON:** She may be excused, Your Honor.

3           **MR. BENTLEY:** Excused is fine, Your Honor.

4           **THE COURT:** Ma'am, you are excused. You may step  
5 down. That means you can remain in the courtroom, all right?

6           **WITNESS:** Thank you.

7           **THE COURT:** Who is next?

8           **MR. MOLLER:** We'd like to call Pastor Paul Perkins,  
9 Your Honor.

10          **THE COURT:** All right, let's bring him in.

11          Sir, if you would, please, come up here in the front.

12 Come up here, place your left hand on the Bible here, raise  
13 your right hand and face the clerk and take the oath.

14          (Oath Administered)

15          **THE COURT:** If you would, sir, please have a seat in  
16 the witness box. You will see a microphone there in front of  
17 you. I need you to speak into it and speak slowly so the court  
18 reporter can type down everything you're saying. She can't  
19 type two people talking at once, so you have to let the lawyers  
20 finish talking before you start answering. Also, she cannot  
21 type shakes or nods of the head or an uh-huh or nuh-uh, so you  
22 must verbalize all answers yes or no; do you understand that,  
23 sir?

24          **THE WITNESS:** Yes, sir.

25          **THE COURT:** Please state your full name for the court

1 reporter.

2 **WITNESS:** Paul Matthew Perkins.

3 **THE COURT:** Whenever you're ready, counsel.

4 **PAUL PERKINS,**

5 **having first been duly sworn, testified as follows:**

6 **DIRECT EXAMINATION**

7 **BY MR. MOLLER:**

8 Q. Pastor Perkins, where do you currently live?

9 A. Vancleave, Mississippi.

10 Q. And who lives there with you?

11 A. My wife and two of our children.

12 Q. And what are the ages of your children?

13 A. We have five children, 27, 25, 22 and 18 and 10.

14 Q. Is your 18 year old in school?

15 A. He is in a gap year right now. He will be going to  
16 college this fall.

17 Q. And what grade is your ten year old in?

18 A. Fifth grade.

19 Q. And where does she attend school?

20 A. She is homeschooled.

21 Q. Where were you born and raised?

22 A. I was born in Warsaw, Indiana, and raised in the  
23 northeast, I went to college in Boston, moved to Ocean Springs  
24 in 1989.

25 Q. And have you been in Mississippi since 1989?

1 A. From '95 we surrendered to be missionaries. So from 1997  
2 until 2007, we lived in the Philippines.

3 Q. And when did you come back to Mississippi?

4 A. In February of 2007. And we came back, and then I became  
5 the pastor of Grace Baptist Church in August of 2007, so that's  
6 when it was more permanent.

7 Q. Where is Grace Baptist Church?

8 A. Ocean Springs.

9 Q. Ocean Springs. And can you describe how you came back and  
10 became the pastor at Grace Baptist?

11 A. We had served at the church and youth ministries and music  
12 ministries and then became missionaries. We came home after  
13 Hurricane Katrina. It had affected our support level, and we  
14 needed to check on family and see how things were here and then  
15 replace some of the support that we had lost.

16 Q. And you mentioned Grace Baptist school. Is that a  
17 Christian school?

18 A. Yes, Grace Baptist Academy is a ministry of our church,  
19 Grace Baptist Church. It's located on the same property.

20 Q. On the same property. What's your day-to-day role at  
21 Grace Baptist?

22 A. I am the headmaster and I teach two classes.

23 Q. Does your wife work?

24 A. My wife homeschools our daughter, and she helps to take  
25 care of her mom who just came out of a rehab, and also with my

1 mom who is in stage 4 or 5 Parkinson's. She takes care of some  
2 of the elderly folks in our church helping different needs that  
3 they have. Sometimes they will call her in moments of anxiety.  
4 And one of our elder senior saints, Mr. Al, who just lost his  
5 wife, he'll work himself into high blood pressure, heart rate  
6 going up. So my wife may talk to him for an hour. So she is  
7 not in a paid position, but she does work. She is the church  
8 pianist, helps teach in classes and stays pretty busy.

9 Q. Understood. Your daughter, where do most of her friends  
10 attend school?

11 A. Most of her friends either attend school at Grace Baptist  
12 Academy or are homeschooled, and they all go to church  
13 together.

14 Q. And would you say she interacts with them pretty regular?

15 A. Yes.

16 Q. What religion do you belong to?

17 A. Christian.

18 Q. What denomination?

19 A. Baptist.

20 Q. And how long have you been a Christian?

21 A. I became a Christian in July of 1979.

22 Q. Would you say religious beliefs are an essential part of  
23 your life?

24 A. Yes, sir.

25 Q. How do your religious beliefs impact your life on a

1 day-to-day basis?

2 A. We try to live in following what the Bible would teach us,  
3 so simple things such as seeking the Lord early, spending time  
4 in devotional Bible reading prayer times. And then, of course,  
5 being a pastor, it involves my trips to the hospital. Saturday  
6 morning one of our senior saints passed away at Ocean Springs  
7 Hospital. So I get a phone call, and family has been called  
8 in, so it might be something to that extent. It might be  
9 counseling families, being in their homes. We are involved in  
10 a lot of different ministries of the church, sometimes it's at  
11 George County jail. But overall, how we live, how we treat  
12 people, respect others. We try to follow the teachings that we  
13 learn from the Bible.

14 Q. And do your religious beliefs inform how you educate your  
15 children?

16 A. Yes, sir.

17 Q. And how you run Grace Baptist Academy?

18 A. Yes, sir. We want to obviously teach math and sciences  
19 and history and all, but we want to teach it with a God world  
20 view. Obviously, we believe that God created from scripture.  
21 And, of course, we teach the evolution and the other things,  
22 but we want our children to understand they're created in the  
23 image of God and he has a plan for their lives.

24 Q. It's our understanding that the Attorney General is not  
25 going to be questioned in the sincerity of your religious

1 beliefs with regard to vaccination. But I do want to ask, do  
2 your religious beliefs prohibit you from vaccinating your  
3 children?

4 A. Yes, sir.

5 Q. Does your wife share those religious objections?

6 A. Yes, she does.

7 Q. Do you have religious objections to all vaccines or just  
8 to some vaccines?

9 A. To all.

10 Q. Why is your daughter not enrolled at Grace Baptist  
11 Academy?

12 A. Because of the Mississippi State vaccine requirements.

13 Q. Would you say that Mississippi's vaccination requirements  
14 are substantially burdening your religious beliefs?

15 **MR. SHANNON:** Object to the leading, Your Honor.

16 **THE COURT:** Let's rephrase the question, counsel.

17 **BY MR. MOLLER:**

18 Q. Are your religious beliefs burdened by that vaccination  
19 law?

20 A. Yes, sir.

21 Q. Do you feel coerced by the state to abandon your religious  
22 beliefs against vaccinations?

23 A. Yes, sir.

24 Q. Has the state's vaccination laws created tension between  
25 your educational mission as the headmaster of Grace Baptist

1 Academy in upholding your religious beliefs?

2 A. Yes, sir.

3 Q. How so?

4 A. We have families that would desire to put their children  
5 in a Christian school, Christian environment. And when we are  
6 asked, where do you stand with immunizations and vaccines and  
7 such, we have to tell them that we are following the  
8 Mississippi State requirements. And so if a child enrolls,  
9 they have to bring an immunization record with them. And  
10 parents who are not in agreement with that, will walk away and  
11 not put their children in our school.

12 Q. So families in Mississippi have attempted -- with  
13 unvaccinated children have wanted to enroll at Grace Baptist,  
14 but you had to turn them away?

15 A. Yes, sir.

16 Q. Sir, I want to just briefly discuss the impacts the  
17 mandatory vaccination laws have on your family. Can you please  
18 explain how it's affecting your family?

19 A. Because of being involved in ministry, our lives are  
20 hectic at times, often. And so my daughter, Tessa, is a little  
21 behind in her math and her homeschooling. My wife, this past  
22 week, for example, spent overnight with her mom at the CRC in  
23 Singing River Hospital in Pascagoula. And so she was out of  
24 the home for a couple of days last week, and so we have to try  
25 to figure out how to get classes together, when to do that.

1 Some of her classes were at the hospital, and that's not the  
2 greatest setting, but trying to do that.

3 For my wife, she has wanted to be a doula and began to  
4 study that with a midwife friend of hers, but having to  
5 homeschool kind of curtailed that thought for her in her life.  
6 And then myself, I have a Christian school that I teach in, I  
7 participate in it. And I can't enroll my daughter in that  
8 school because of these requirements.

9 Q. And would your daughter enroll in this school if she was  
10 able to obtain a religious exemption?

11 A. Yes, sir. She wants to be there.

12 Q. She wants to be there. And you mentioned your son is  
13 going to college in Indiana; is that correct?

14 A. Yes, sir, he is, in the fall.

15 Q. Did he consider furthering his studies in Mississippi?

16 A. Yes, sir. I had a pastor friend that sent me an email  
17 that Mississippi College was offering scholarships to Baptist  
18 preachers' kids if they could enroll by January of '23. But  
19 because of the vaccine requirements I knew that they would  
20 have, we did not accept that scholarship that would've been  
21 very beneficial for our family. So we'll be paying for college  
22 in Indiana.

23 Q. Does he share similar religious beliefs as you and the  
24 rest of your family against vaccinations?

25 A. Yes, sir.



1 Q. When did you become the headmaster of Grace Baptist?

2 A. 2007.

3 Q. Anytime since you have been the headmaster there, have  
4 unvaccinated children ever been enrolled at this school?

5 A. Yes, sir. When I first arrived, I didn't think about it  
6 or research it, I just accepted the flow of what was going on  
7 in the school when I arrived. So we didn't ask about  
8 immunization records when students would come, and then I had a  
9 pastor friend in Gulfport say, hey --

10 **MR. SHANNON:** Object to the hearsay, Your Honor, move  
11 to strike.

12 **THE COURT:** I'll sustain. See if you can rephrase  
13 the question.

14 **BY MR. MOLLER:**

15 Q. Can you describe the situation of when children were  
16 enrolled and you had to disenroll them without speculating  
17 about their beliefs?

18 A. When we learned the law, we met with the parents of the  
19 school and said, we have not been asking about immunization  
20 records, the law says that we are required, we will be in the  
21 future, and so if you choose not to be a part of that, then  
22 we'll have to not allow you to come back to the school.

23 Q. And did you have to kick children out of the school?

24 A. Yes, sir. There were students that did not come back.  
25 One family moved to Florida, the others chose to homeschool.

1 Q. And are there any unvaccinated children enrolled at Grace  
2 Baptist now?

3 A. No, sir.

4 Q. And why is that?

5 A. Because of the Mississippi state law.

6 Q. You understand that because you are the headmaster of  
7 Grace Baptist school, the Attorney General and her prosecutor  
8 can subject you to criminal prosecution?

9 **MR. SHANNON:** Objection, leading, lack of foundation.

10 **BY MR. MOLLER:**

11 Q. You understand if you violate Mississippi's Compulsory  
12 Vaccination Law in your role as the headmaster, that you could  
13 be subjected to criminal prosecution?

14 A. Yes, sir.

15 Q. Did the possibility of prosecution by the State of  
16 Mississippi factor into your decision to remove your  
17 unvaccinated children from school?

18 A. Yes, sir.

19 Q. Can you state it louder for the record?

20 A. Yes, sir.

21 Q. How many children are enrolled at Grace Baptist right now?

22 A. I believe it's 45 right now.

23 Q. And you described a situation where children had to  
24 disenroll from the school, how many was that?

25 A. Either nine or ten. I'd have to go back and look.

1 Q. Forty-five, has that number stayed relatively constant  
2 around that number, forty-five?

3 A. It's up and down.

4 Q. At the time that ten left the school, how many would you  
5 estimate were total in the school?

6 A. Probably 50, between 50 and 60 then.

7 Q. So it was a significant number of children that left?

8 A. Yes, sir.

9 Q. Other than your daughter, are there other unvaccinated  
10 children you are aware of who would like to enroll at Grace  
11 Baptist school right now?

12 A. Yes, sir.

13 Q. And do these families have religious beliefs that preclude  
14 them from vaccinating their children?

15 A. Yes, sir.

16 Q. If a religious exemption were available in Mississippi,  
17 have any of them told you that they would like to enroll their  
18 children at Grace Baptist?

19 **MR. SHANNON:** Objection, hearsay.

20 **THE COURT:** Sustained. See if you can rephrase it,  
21 counsel.

22 **MR. MOLLER:** Yes, sir.

23 **BY MR. MOLLER:**

24 Q. Are you aware of families with unvaccinated children that  
25 would enroll at Grace Baptist Academy?

1 A. Yes, sir.

2 Q. And they would seek the religious exemption if one were  
3 available?

4 A. Yes, sir.

5 **MR. MOLLER:** That's all I have, Your Honor.

6 **THE COURT:** Any cross-examination?

7 **MR. SHANNON:** Your Honor, we would reserve our  
8 questions for this witness at this time.

9 **THE COURT:** Counsel?

10 **MR. BENTLEY:** No cross, Your Honor.

11 **THE COURT:** Do you want him -- is he allowed to  
12 remain in the courtroom if you are reserving your questions? I  
13 guess I should've asked this earlier. You excused the previous  
14 witness, so I assume that means you aren't concerned --

15 **MR. SHANNON:** I think with regard to this witness, we  
16 prefer that he remain excluded.

17 **THE COURT:** All right. Sir, you can step down, but I  
18 will ask that you please remain outside the courtroom in case  
19 you are called again by the defense.

20 Who would be the next witness for the plaintiffs?

21 **MR. SIRI:** Next witness, Your Honor, would be Brandi  
22 Renfroe.

23 **THE COURT:** We'll have her come in.

24 Ma'am, if you will come up to the front here. If you  
25 would, please, come here, place your left hand on the Bible,

1 raise your right hand and take the oath.

2 (Oath Administered)

3 **THE COURT:** Please have a seat in the witness box.

4 You will see a microphone there in front of you. I need you to  
5 speak into it and speak slowly so the court reporter can type  
6 down everything you're saying. She cannot type two people  
7 talking at once, so you have to let the lawyers finish talking  
8 before you start answering. She also cannot type a shake or a  
9 nod of the head or an uh-huh or nuh-uh, so you must verbalize  
10 all answers yes or no, do you understand that, ma'am?

11 **WITNESS:** Yes, sir.

12 **THE COURT:** Please begin by stating your full name  
13 for the court reporter.

14 **WITNESS:** My name is Brandi Senseney Renfroe.

15 **THE COURT:** Counsel, whenever you're ready.

16 **MR. SIRI:** Thank you, Your Honor.

17 **BRANDI RENFROE,**  
18 **having first been duly sworn, testified as follows:**

19 **DIRECT EXAMINATION**

20 **BY MR. SIRI:**

21 Q. Good morning, Ms. Renfroe.

22 A. Good morning.

23 Q. Where do you currently live?

24 A. In Grand Bay, Alabama.

25 Q. And are you married?

1 A. I am married.

2 Q. Do you have children?

3 A. I do.

4 Q. How many?

5 A. Two.

6 Q. And what are their ages and grade levels?

7 A. Their ages are 11 and 9, and they are in the fourth and  
8 fifth grades.

9 Q. I am going to ask you a few questions about your ties to  
10 Mississippi for a minute. Where were you born and raised?

11 A. I was born and raised in Ocean Springs, Mississippi.

12 Q. And were you raised going to church in Mississippi?

13 A. I was.

14 Q. What church did you go to?

15 A. St. Alphonsus Catholic Church.

16 Q. Did other members of your family go there?

17 A. Yes, all.

18 Q. Everybody?

19 A. Everybody.

20 Q. Do you still go to that church?

21 A. I do.

22 Q. You are currently living in Grand Bay, Alabama, you said.  
23 How far over the border in Alabama do you live from  
24 Mississippi?

25 A. I live just a few minutes over the state line.

1 Q. And where do you currently work?

2 A. I work in Mississippi.

3 Q. And what do you do?

4 A. I am a court reporter.

5 Q. And where does your husband work?

6 A. He works in Mississippi, also, Bay St. Louis, Mississippi.

7 Q. And what does he do?

8 A. He is a realtor.

9 Q. Presumably, you and your husband have to commute into  
10 Mississippi every day and back; right?

11 A. That's correct.

12 Q. Where are all your husband's and family friends?

13 A. All in Mississippi. All the families are in Mississippi  
14 for both of us.

15 Q. And all of your children's friends?

16 A. That is correct.

17 Q. Also in Mississippi?

18 A. Yes, also Mississippi.

19 Q. If you didn't have to move to Alabama, would your commute  
20 to work be shorter?

21 A. Yes, significantly.

22 Q. And your husband's commute to work?

23 A. Yes, also significantly.

24 Q. How about the commute to go see your family and friends?

25 A. Yes, it is definitely longer.

1 Q. Has the fact that you live in Alabama made it so that you  
2 missed out on opportunities to be able to see family and  
3 friends?

4 A. A lot. A lot.

5 Q. Is that true for your children as well?

6 A. Yes, it is. It's too far to just swing by and have a  
7 playdate or visit with family a lot of times.

8 Q. And none of your family is in Alabama; correct?

9 A. No.

10 Q. Everybody is in Mississippi?

11 A. Everyone is in Mississippi.

12 Q. And why do you live in Alabama?

13 A. Because we do not have an option for a religious exception  
14 in Mississippi.

15 Q. When you say not an option for religious exemption, do you  
16 mean to attend school in Mississippi?

17 A. That is correct.

18 Q. In Alabama, your children, you said, attended school. Do  
19 they attend school with a religious exemption to vaccination?

20 A. They do.

21 Q. Can you apply for a religious exemption in Alabama?

22 A. Yes, I did.

23 Q. Was it a process for obtaining that exemption?

24 A. There was a process for obtaining it.

25 Q. And you were approved?



1 A. Yes, I was.

2 Q. Can you tell me any of the things that your children do in  
3 Mississippi even though they live in Alabama?

4 A. Yes. They are both on Mississippi baseball teams, both of  
5 them. One is on, actually, two baseball teams in Mississippi,  
6 league and travel ball. They are both on travel ball in  
7 Mississippi, so...

8 Q. And the baseball season, how long is that?

9 A. It starts in August, and we have a little break over the  
10 holidays, and then spring picks up, and it probably ends around  
11 the end of June.

12 Q. So nine months out of the year?

13 A. Or longer.

14 Q. Or longer. How many days per week on average during the  
15 nine months of the baseball season do your children travel into  
16 Mississippi to play in the baseball league or in one of the  
17 baseball activities?

18 A. Between both of them, it's almost daily.

19 Q. So pretty much every day one of your children is coming to  
20 Mississippi to play baseball?

21 A. Yes.

22 Q. Other than coming to Mississippi to play baseball -- let  
23 me ask you this: And when they do that, I assume they are  
24 interacting with other children in Mississippi?

25 A. Yes.

1 Q. And those children, to your knowledge, are they typically  
2 children who live in Mississippi?

3 A. Yes, they all live in Mississippi. These are Mississippi  
4 baseball teams.

5 Q. And other than coming into Mississippi for baseball, do  
6 your children come into Mississippi to engage in any other  
7 activities?

8 A. Yes, to visit with family and friends. And we go fishing  
9 in Mississippi, boating. We're members of the yacht club in  
10 Pascagoula, Mississippi, so we're over there often, especially  
11 during the summer, boating, playing tennis, swimming, fishing  
12 off the piers.

13 Q. How often do you go to the yacht club during the course of  
14 the year?

15 A. Several times a week, including the weekends.

16 Q. All year long?

17 A. More in the summer.

18 Q. And do they play with other children at the yacht club?

19 A. Yes. Most of their friends are at the yacht club.

20 Q. How about holidays with family, do you come to Mississippi  
21 to spend time in Mississippi with family?

22 A. Every holiday.

23 Q. And how big is your family?

24 A. My dad is one of ten and my mom was one of six, and  
25 cousins and -- there are a lot. We have a big family.

1 Q. Most of them still in Mississippi?

2 A. Yes.

3 Q. So when you have these family gatherings, it sounds like  
4 there would be a lot of kids running around?

5 A. Yes.

6 Q. And your kids play with all the other kids?

7 A. Yes.

8 Q. Their cousins, effectively?

9 A. Right, correct.

10 Q. And you mentioned earlier you attend church in Mississippi  
11 still?

12 A. That's correct.

13 Q. And you come with your husband and your kids to church?

14 A. Yes.

15 Q. How about anything else like just normal routine affairs  
16 like haircuts and so forth, do you do those in Alabama or do  
17 you still come to Mississippi for those?

18 A. We do those in Mississippi. We come over to eat, we come  
19 over to hang with the friends and do activities in Mississippi.

20 Q. So when did you move to Alabama?

21 A. We moved to Alabama when my oldest was five, and he is 11  
22 now.

23 Q. So about six years ago, okay. And before you moved to  
24 Alabama, I guess it was during preschool, did your children  
25 attend school anywhere?

1 A. Preschool, they attended in Grand Bay, Alabama, but we  
2 lived in Mississippi because it was a private school, and we  
3 drove them daily for a year and a half to preschool.

4 Q. How long is that drive?

5 A. 40 minutes.

6 Q. Each way?

7 A. Each way.

8 Q. So for about a year and a half you drove 40 minutes each  
9 way from Mississippi to Alabama to put your children in  
10 preschool?

11 A. That's correct, so they could have the experience of  
12 preschool.

13 Q. And they weren't able to attend preschool in Mississippi,  
14 was that because they didn't receive the vaccines that are  
15 required?

16 A. That's correct. We were denied.

17 Q. When you think of home, where do you think of home? In  
18 your mind when you think of home, where do you think of?

19 A. Home is Mississippi.

20 Q. Do you own a house in Mississippi?

21 A. Yes, we do.

22 Q. Is that the house you think of when you think of home?

23 A. That would be our home if we could live in Mississippi.

24 Q. Do you spend summers there?

25 A. We do.

1 Q. Holidays?

2 A. All holidays.

3 Q. Important family events, is that where you have those?

4 A. Birthdays.

5 Q. And when your kids think of home, where do they think home

6 -- where do they think of home?

7 A. Mississippi.

8 Q. And your husband?

9 A. Mississippi, definitely.

10 Q. What state is your driver's license from?

11 A. Mississippi.

12 Q. And what city are you registered to vote in?

13 A. Mississippi.

14 Q. If your children were permitted to attend school with a

15 religious exemption for the mandate of vaccines, would you

16 return to Mississippi?

17 A. Absolutely.

18 Q. What religion do you associate with?

19 A. Catholicism.

20 Q. How long would you say you have been a practicing

21 Catholic?

22 A. Since I was born. I was baptized into the Catholic church

23 at St. Alphonsus.

24 Q. Did you have religious education of any kind, like a

25 Sunday school?

1 A. Yes, we had CCD every Sunday. I attended that from first  
2 grade through 12th grade.

3 Q. And where did you receive your first reconciliation,  
4 communion, confirmation?

5 A. At St. Alphonsus Catholic Church in Ocean Springs.

6 Q. What about your children?

7 A. Same, they have both received -- they were both baptized  
8 in the church at St. Alphonsus, and they have both received  
9 their first reconciliation and first communion at St.  
10 Alphonsus?

11 Q. Would it be fair to say that your religious beliefs are a  
12 central part of your daily life?

13 A. Absolutely.

14 Q. Does it dictate how your daily and weekly habits in terms  
15 of what you do and what you think?

16 A. Yes.

17 Q. Does it guide how you raise your family?

18 A. It absolutely does.

19 Q. Do you engage in any type of daily prayers?

20 A. I do.

21 Q. Could you describe some of those?

22 A. Sure. When I am driving, I like to say the rosary daily.  
23 I pray with my kids. We pray before games or big events, or if  
24 they have a test, and before they leave for school we'll say a  
25 small prayer, and then we pray at night before they go to bed.

1 Q. So is the prayer a daily event in your house?

2 A. Yes, it is.

3 Q. So it's every evening. Is it every morning, too?

4 A. Sometimes. Like I said, if they have a test at school or  
5 something going on, we may say a prayer before they head out  
6 the door.

7 Q. Do your children pray as well?

8 A. Yes, they do.

9 Q. Do they ever ask you to pray on anything?

10 A. Yes. As a matter of fact, my son came to me this morning  
11 and asked me to pray.

12 Q. Is there any type of religious symbols or items in your  
13 home?

14 A. Yes, we have -- I have several crosses in the home all  
15 over. I have Mary statues inside and in the garden. I have  
16 the "Our Father" prayer, each of my grandmother's "Our Father"  
17 plates displayed.

18 Q. And I assume you -- I am assuming you observe Lent, Easter  
19 and Christmas and all the other --

20 A. Yes, we observe all that.

21 Q. Have you been a member of any type of religious groups?

22 A. I am currently in a rosary prayer group that I have been  
23 in since 2002, local ladies along the Gulf Coast. We get  
24 together.

25 Q. And what do you do in this group?

1 A. We get together and we pray for anything that needs to be  
2 prayed for. And we always end with saying the rosary for those  
3 that we pray for, things that we need to pray.

4 Q. Can you please explain some of the harms that you believe  
5 have resulted from your children not being able to attend  
6 school in Mississippi?

7 A. Well, they have missed out tremendously on things that  
8 their friends get to do. As they're getting older now, they're  
9 recognizing these issues and they get upset about it. So their  
10 friends had spring break, a different spring break than ours  
11 and couldn't do the things they wanted to do with them when all  
12 the friends were getting together, and they recognize this now.  
13 It's upsetting for them. So we just miss out on a lot. We  
14 can't just swing by for a minute and hang out and play like we  
15 used to do. It's a process. And more than likely, we can't do  
16 it. It's just -- it's too much. It's too far to run by  
17 someplace. But we used to live in the middle of everything  
18 where you could run here, run there. It's not like that  
19 anymore, and we don't have the friends and the family and  
20 connections over there like we do in Mississippi, so that's why  
21 we basically sleep and go to school in Alabama and everything  
22 else is in Mississippi.

23 Q. Lost time with family because you have had to move to  
24 Alabama?

25 A. Absolutely we have lost time. We used to spend a lot of



1 time -- people just stopping by. We have a really big family,  
2 a very close family, and we have not been able to have that.  
3 It would go from living in Mississippi, we would see our  
4 parents every couple days, at least, to maybe every couple  
5 weeks now or three weeks. And we just lost a lot of good time  
6 when we had to move. We have lost that and we can't get that  
7 back.

8 Q. The defendants here have agreed not to -- they're not  
9 contesting sincerely the nature of your religious beliefs that  
10 are contrary to the practice of immunization. But I will just  
11 ask, is it because of the sincere nature of your beliefs and  
12 your religious beliefs contrary to vaccination that you have  
13 endured all the hardships you have just described?

14 A. Yes, that is correct.

15 Q. But for your religious beliefs with regards to  
16 vaccination, would you otherwise be able to meet the  
17 requirements of Mississippi and attend -- your children to  
18 attend school here?

19 A. Yes.

20 Q. But based on the mandatory vaccine statute in Mississippi,  
21 you can't enroll your children in Mississippi; correct?

22 A. That is correct.

23 Q. Has Mississippi's vaccination requirements burdened your  
24 religious exercise by forcing you to choose between residing  
25 and educating your children in the state or undertaken

1 vaccination that's inconsistent with your beliefs?

2 A. Yes.

3 Q. Does Mississippi's vaccination requirement, if you  
4 complied with them, substantially burden your religious  
5 beliefs?

6 A. Yes.

7 Q. If it came to it, would you go to prison before  
8 vaccinating your children?

9 A. Of course.

10 Q. Ms. Renfroe, if Mississippi had a vaccination -- had a  
11 religious exemption to the vaccination requirements here in the  
12 state, would you immediately bring your family back and enroll  
13 your children in school in Mississippi?

14 A. Yes, immediately, I would.

15 **MR. SIRI:** Your Honor, I have a number of exhibits  
16 I'd like to show the witness.

17 **THE COURT:** All right, you may approach. I assume  
18 counsel for defense has seen these?

19 **MR. SHANNON:** Your Honor, the plaintiffs' counsel has  
20 provided us with a binder with three exhibits in it. I assume  
21 that's what he is referencing.

22 **MR. SIRI:** Yes.

23 **THE COURT:** Okay.

24 **BY MR. SIRI:**

25 Q. Ms. Renfroe, have you visited the Mississippi Department

1 of Health's website?

2 A. I have.

3 Q. Can you please turn to tab 1 of the binder that's been  
4 provided to you?

5 A. Okay.

6 Q. Have you seen this document before that is in tab 1 of the  
7 binder?

8 A. Yes, I have.

9 Q. Would it be correct to say that this is the Mississippi  
10 Department of Health's medical exemption form for the vaccine  
11 mandate for kindergarten through 12th grade that is available  
12 on the Mississippi Department of Health's website?

13 A. Yes, it is.

14 Q. In looking through the Department of Health's website and  
15 otherwise, to your knowledge, are you aware of any religious  
16 exemption form that exists to the vaccine requirements in the  
17 State of Mississippi?

18 A. No, there is not one.

19 Q. Anything at all similar for this exemption form that they  
20 have for medical exemptions that they might have for religious  
21 exemptions?

22 A. None.

23 Q. Can you please turn to tab 2 of the binder?

24 **THE COURT:** Let me ask, counsel, are you offering  
25 these in evidence or are these just for identification?

1                   **MR. SIRI:** I was going to offer them at the end, Your  
2 Honor.

3                   **THE COURT:** Go ahead.

4 **BY MR. SIRI:**

5       Q. Similarly, Ms. Renfroe, turning to tab 2, have you seen  
6 this web printout of a web page before from the Mississippi  
7 Department of Health website?

8       A. Yes, I have.

9       Q. And is it correct -- would it be correct to say that this  
10 is a printout of the Department of Health's website which  
11 reflects the available medical exemption process to the vaccine  
12 mandates in Mississippi for kindergarten through 12th grade  
13 education?

14       A. Yes, it is.

15       Q. Have you ever seen anything on the Mississippi Department  
16 of Health website that provides for any type of exemption  
17 process for religious reasons?

18       A. No, I have not.

19       Q. Can you please turn to the third page of Exhibit 2. Do  
20 you see the bold text, black bolded text on that page?

21       A. Yes.

22       Q. Have you seen that? It's on tab 2, the third page. Let  
23 me know when you found it.

24       A. Yes, I'm there.

25       Q. Great. Do you see the black bolded text right there?

1 A. I do.

2 Q. Have you ever seen that language before?

3 A. Yes, I have.

4 Q. Can you please read that out loud?

5 A. Yes.

6 **THE COURT:** Let me stop you. Technically, if it's  
7 not in evidence you shouldn't be reading from it. So do you  
8 want to --

9 **MR. SIRI:** Thank you, Your Honor. Your Honor, I  
10 would like to move exhibits -- I'd like to move the documents  
11 in this binder into evidence. They are -- they all are  
12 government documents from the Mississippi Department of  
13 Health's website. They are all government documents, and Your  
14 Honor could take judicial notice of it.

15 **THE COURT:** This is offered as P-1, 2 and 3 then; is  
16 that right counsel?

17 **MR. SIRI:** Yes, Your Honor.

18 **THE COURT:** Any objection?

19 **MR. SHANNON:** None from the Attorney General, Your  
20 Honor.

21 **MR. BENTLEY:** Your Honor, on behalf of Dr. Edney, we  
22 don't have any objections. I agree that these are all taken  
23 from the Department of Health's website and they are publicly  
24 available documents.

25 **THE COURT:** All right. Based on that, the Court will

1 admit them. P-1, 2 and 3 are admitted. Does the deputy clerk  
2 have originals of these, counsel?

3 **MR. SIRI:** No, Your Honor.

4 **THE COURT:** Present her with the originals so she can  
5 mark and admit them and then you may proceed.

6 **MR. SIRI:** May I approach, Your Honor?

7 **THE COURT:** Yes.

8 (EXHIBITS P1, 2 AND 3 MARKED)

9 **BY MR. SIRI:**

10 Q. Ms. Renfroe, can you kindly read the bolded text on the  
11 third page of what's been marked as P-2?

12 A. Yes. "Exemption from required immunizations for  
13 religious, philosophical or conscientious reasons is not  
14 allowed under Mississippi law."

15 Q. Thank you. Ms. Renfroe, could you kindly turn to the  
16 third tab which has been marked P-3?

17 A. Okay.

18 Q. Have you seen this document before?

19 A. Yes, I have.

20 Q. Is it correct to state that this is a report that reflects  
21 hundreds of medical exemptions that the State of Mississippi  
22 has granted to the vaccine mandates for kindergarten through  
23 12th grade education in Mississippi?

24 A. Yes, it does.

25 Q. Does this report, to your knowledge, reflect any harm that

1 granting these secular exemptions for kindergarten through 12th  
2 grade education has caused?

3 **MR. SHANNON:** Objection to the extent it would call  
4 for an expert opinion, Your Honor.

5 **THE COURT:** Response?

6 **MR. SIRI:** Your Honor, I asked to her knowledge. I  
7 am asking not about whether or not -- I am asking her whether  
8 or not she is aware that the report itself evidences that there  
9 is any harm that's been caused. I think she has the ability to  
10 assess that with looking at the report, Your Honor.

11 **THE COURT:** Rephrase the question and be a little bit  
12 more clear about that.

13 **MR. SIRI:** Sure.

14 **BY MR. SIRI:**

15 Q. Upon reviewing this report, Ms. Renfroe, did you see  
16 anything in this report that reflected any harm that accrued  
17 from granting these medical exemptions within the State of  
18 Mississippi?

19 **MR. SHANNON:** Objection, Your Honor. The document  
20 speaks for itself.

21 **THE COURT:** Well, he is asking her about her review  
22 of the document, so I will overrule it. She can answer.

23 A. I did not.

24 **BY MR. SIRI:**

25 Q. But again, Mississippi does not permit a religious

1 exemption; correct?

2 A. Correct, they do not.

3 Q. Ms. Renfro, are you aware of other families in  
4 Mississippi that can't send their children to school because  
5 they object to vaccination for religious reasons?

6 A. Yes.

7 Q. Are you involved with a group that seeks to restore  
8 religious exemption to vaccination in Mississippi?

9 A. I am.

10 Q. How many families would you estimate are part of that  
11 group?

12 A. At least a couple hundred.

13 Q. And these are all families that are in Mississippi or  
14 would like to be in Mississippi to your knowledge?

15 A. Yes, that's correct.

16 Q. Do many of those families, based on your direct knowledge,  
17 have sincerely held religious beliefs that prevent them from  
18 vaccinating their children?

19 A. Yes.

20 **MR. SHANNON:** Objection, Your Honor, that would call  
21 for speculation.

22 **THE COURT:** Lay more of a foundation of how she would  
23 know that answer to that question.

24 **MR. SIRI:** Thank you, Your Honor.

25 **BY MR. SIRI:**



1 Q. Have you had discussions with members of this group that  
2 we have just been talking about?

3 A. Yes.

4 **MR. SHANNON:** Object to the extent he is getting into  
5 hearsay, Your Honor.

6 **MR. SIRI:** I didn't ask about the substance of the  
7 communications, I just asked if she had communications, Your  
8 Honor.

9 **THE COURT:** Overruled.

10 A. Yes, I have.

11 **BY MR. SIRI:**

12 Q. And during -- and have you interacted with many of those  
13 families over the course of the years?

14 A. Yes, I have.

15 Q. Over the course of how many years have you interacted with  
16 the families that are members of this group that you described?

17 A. Approximately ten years.

18 Q. And through those interactions with the families that are  
19 members of this group, have you come to have an understanding  
20 -- during those discussions, did you discuss -- did the topic  
21 of discussion involve religious beliefs?

22 A. Yes.

23 Q. Did the topics of discussion include your religious  
24 beliefs?

25 A. Yes.

1 Q. As well as the religious beliefs of those families?

2 A. That's correct.

3 Q. Based on those ten years of interactions with members of  
4 the group, is it your understanding that many members of this  
5 group have religious beliefs that prevent them from vaccinating  
6 their children?

7 **MR. SHANNON:** Object to hearsay.

8 **THE COURT:** Overruled. He has laid an adequate  
9 foundation in the Court's view. You may answer the question.

10 A. Yes.

11 **BY MR. SIRI:**

12 Q. But they don't have a process for obtaining a religious  
13 exemption to vaccination in Mississippi; correct?

14 A. That's correct.

15 Q. They are all in the same boat as you; correct?

16 A. That's correct.

17 **MR. SIRI:** Thank you, Ms. Renfroe. Your Honor, I  
18 have no further questions.

19 **THE COURT:** Any questions from the defense?

20 **MR. SHANNON:** We reserve our questions for her, Your  
21 Honor.

22 **MR. BENTLEY:** No questions, Your Honor.

23 **THE COURT:** Same question, can she be excused and  
24 remain in the courtroom or does she need to remain outside  
25 subject to recall?

1           **MR. SHANNON:** It's fine with us for her to remain in  
2 the courtroom, Your Honor.

3           **THE COURT:** Can she be excused, Mr. Siri?

4           **MR. SIRI:** Yes, Your Honor.

5           **THE COURT:** Ma'am, you're excused, you may step down.  
6 You may remain in the courtroom.

7           **MR. WIEST:** Your Honor, the plaintiffs have no more  
8 witnesses and we rest our proof, obviously, subject to argument  
9 on the motion.

10          **THE COURT:** All right. Does the Attorney General  
11 have any evidence to offer?

12          **MR. SHANNON:** No, Your Honor.

13          **THE COURT:** How about Dr. Edney?

14          **MR. BENTLEY:** No, Your Honor.

15          **THE COURT:** Well, the Court would consider the record  
16 closed in terms of the evidence. I will certainly give you a  
17 chance to argue. How much time are you looking for to argue?  
18 You have done a pretty good job briefing, I understand the  
19 issues, but how much time would you like?

20          **MR. WIEST:** Your Honor, 15 minutes each, we can do 10  
21 and rebut in five.

22          **MR. SHANNON:** I think 20 minutes would be adequate.

23          **MR. WIEST:** No objection.

24          **THE COURT:** Mr. Edney, or counsel?

25          **MR. BENTLEY:** That's fine, Your Honor, 20.

1           **THE COURT:** I'll give you 20 minutes each. How much  
2 do you want to reserve for your rebuttal?

3           **MR. WIEST:** Five minutes, Your Honor. Judge, we do  
4 have Pastor Perkins out in the hall still. We'd like to bring  
5 him back in since the proof is closed.

6           **THE COURT:** Yes, since the record is closed he is  
7 finally excused. He may return to the courtroom.

8           Let me ask before we get into argument, we have been going  
9 about an hour, does anybody need a comfort break before we get  
10 into that? 20 minutes each may take us about an hour.

11           **MR. WIEST:** Five minutes will be fine for that, thank  
12 you.

13           **THE COURT:** Let's take a short five-minute break and  
14 court will resume with closings at that time.

15           **(RECESS TAKEN AT 10:33 A.M. UNTIL 10:46 A.M.).**

16           **THE COURT:** All right. Back on the record. Counsel,  
17 you may proceed. The way this works, the way I'll usually do  
18 is I'll give you -- you have 15 minutes initially, I will give  
19 you a five-minute warning and a one-minute warning that you  
20 time is about up. I am not going to cut you off in  
21 mid-sentence, but that's your signal to start kind of wrapping  
22 things up, okay? You may proceed when you're ready.

23           **MR. WIEST:** Your Honor, may it please the Court?

24           **THE COURT:** Yes, sir.

25           **MR. WIEST:** We are here this morning to argue the

1 issue of a preliminary injunction. And based on the papers and  
2 the submissions, I think when you look at the four factors, is  
3 there substantial likelihood of success on the merits. Your  
4 Honor, there's no real dispute between the parties on that, nor  
5 should there be.

6 Is there a substantial threat of irreparable injury if the  
7 injunction is not issued. Our reading of the papers indicates  
8 that the Attorney General is contesting that. I am going to  
9 address that thoroughly in this argument.

10 And as to the remaining two factors, those merge,  
11 particularly whereas here we have a constitutional violation.

12 Your Honor, and I am just going to briefly touch on the  
13 nature of what we're seeking here. We are seeking a mandatory  
14 injunction. We are requesting a religious exemption process.  
15 And we're simply asking the State of Mississippi, and in  
16 particular I suppose the Health Department -- I know we're  
17 going to talk about, perhaps, whether the Attorney General is a  
18 proper party or not. Even if she's not, the Health Department  
19 can create the form and the process and that would be fine with  
20 us, too. But we're looking for a process by which the  
21 plaintiffs, and frankly everyone else whose constitutional  
22 rights are being violated, which is a regular parent that has a  
23 sincerely held religious belief against vaccination, that they  
24 have a process just like Mississippi affords a medical process.  
25 And you saw the exhibits that got entered today. They have a

1 process for medical exemptions. In fact, on the website they  
2 have got the form, they talk about how it's available. They  
3 also talk about, by the way, that there is no religious  
4 exemption that at least the Department of Health currently will  
5 accept.

6 Briefly on the likelihood of success, Your Honor. I think  
7 it comes down to *Fulton vs. the City of Philadelphia*. That's a  
8 recent U.S. Supreme Court case where, effectively, the Supreme  
9 Court said, look, a law is not generally applicable if it  
10 invites the government to consider particular reasons for a  
11 person's conduct by providing a mechanism for individualized  
12 exemptions. That's what we've got here.

13 **THE COURT:** Slow down, counsel, so she can keep up  
14 with you.

15 **MR. WIEST:** Yes, Your Honor. We have that here under  
16 *Fulton*. There is a mechanism for individualized secular  
17 exemptions for medical reasons. There is a form and there's a  
18 process for it. And because there is, that also requires a  
19 religious process. And the state has to afford the same  
20 process to religious adherence that they afford to secular  
21 individuals that are seeking a medical exemption.

22 I think when you look at, even back to *Employment Division*  
23 *versus Smith*, the government, quote, may not refuse to extend  
24 that exemption system in the cases of religious hardship  
25 without a compelling reason. And if the state can accommodate

1 medical exemptions, they can accommodate religious exemptions.  
2 How many? You saw in Exhibit 3 there's been over 400 that were  
3 granted a medical exemption-wise in 2022 alone.

4 Because the Attorney General has contested the irreparable  
5 harm here, Your Honor, I want to spend some time on that in  
6 this argument. And, really, there are three cases that I think  
7 are primarily dispositive of the irreparable harm, two from the  
8 Fifth Circuit and one from the United States Supreme Court, and  
9 I wanted to focus in on those.

10 In *BST Holdings vs. Occupational Safety & Health*  
11 *Administration*, that was a 2021 Fifth Circuit case. The Fifth  
12 Circuit acknowledged, quote, to substantially burden the  
13 liberty interest of reluctant individual recipients put a  
14 choice between their job and their jobs. Well, here the choice  
15 is between parents' ability to educate their children and take  
16 advantage of the state educational system, publicly. Or as was  
17 the case with Pastor Perkins, even private schools are not  
18 permitted to avoid vaccination. Even private religious schools  
19 cannot avoid this mandatory vaccination requirement even if, as  
20 the case with Pastor Perkins, it substantially burdens the  
21 religious belief.

22 So the same coercion that was present in *BST*, the same  
23 coercion by the way, Your Honor, that the Fifth Circuit  
24 addressed in 2022 in *U.S. Navy Seals 1-26 vs. Biden* where the  
25 Fifth Circuit mentioned that the harm is irreparable or there's

1 no adequate remedy at law. And also acknowledged that the loss  
2 of First Amendment freedoms even for minimal periods of time  
3 unquestionably constitutes irreparable injury. This principle  
4 applies with equal force to the First Amendment.

5 And a base here as in *Navy Seals*, these plaintiffs are  
6 staring down even more than a choice between their job and  
7 their jobs, here it is their ability to educate their children  
8 in a public or private school setting in the State of  
9 Mississippi and their religious beliefs. And that is  
10 fundamentally coercion.

11 Finally, Your Honor, *Tandon vs. Newsom*, which was a U.S.  
12 Supreme Court case in 2021 where the Supreme Court acknowledged  
13 that First Amendment rights cannot be burdened even -- that  
14 includes free exercise rights, for even minimal periods of  
15 time. Well, here, there has been a burdening of those rights  
16 for substantial periods of time, and you heard some of that  
17 with the three plaintiffs.

18 Your Honor, on the weighing of harms and public interests.  
19 Again, those factors merge when the government, the opposing  
20 party, that's the *Nken vs. Holder*, we cited that. And the  
21 injunction does not disservice the public interest where it  
22 will, quote, prevent constitutional deprivations. And that  
23 comes right out of the Fifth Circuit decision in *Jackson*  
24 *Women's Health Org. v. Currier*, that is a 2014 case that was  
25 cited in our papers.



1           Your Honor, I did want to address the scope of the  
2           injunction. And I know we made a supplemental filing this  
3           morning with an *en banc*, recent *en banc* decision out of the  
4           Fifth Circuit in *Feds for Medical Freedom vs. Biden*. There was  
5           also a vaccine mandate case in the review of what, effectively,  
6           was a national injunction that the Fifth Circuit ended up  
7           upholding. Now, we're not seeking a national injunction here,  
8           we're seeking a one-state injunction.

9           Again, it's not fully in the F.4th because it's a very,  
10          very recent case. But in the Lexis citation in 48 to 49, the  
11          Fifth Circuit is speaking about the scope of the injunction and  
12          they're saying, look, if it causes confusion or it's going to  
13          be difficult to enforce, you are perfectly within your right  
14          and, frankly, you should extend the injunction to be broad  
15          enough to afford a remedy to those that are injured. And here,  
16          the testimony that you have heard is that this injury extends  
17          beyond the named plaintiffs. If you're going to grant  
18          injunctive relief for Ms. Renfroe or Dr. Stanley, well how  
19          effectively do you do that if you don't extend it statewide?  
20          How are they going to do that? Are they going to bring in the  
21          injunction papers to each school and say, please let us in  
22          because our children are moving schools?

23          I think *Feds for Medical Freedom* stands for the  
24          proposition that a statewide injunction is appropriate against  
25          this law. We're not asking to strike down the state mandatory

1 vaccination law. We are asking that the Department of Health  
2 and others acting in concert with it be required to offer a  
3 medical exemption process just like they do -- I mean, a  
4 religious exemption process just like they do a medical  
5 exemption process.

6 This is the kind of case that the U.S. Supreme Court has  
7 mentioned may well be a hybrid case under *Citizens United vs.*  
8 *FEC*, under *John Doe 1 vs. Reed*, where this distinction between  
9 as-applied and facial is a little blurred because this statute  
10 as applied to anyone that's in these plaintiffs' shoes who have  
11 a sincerely held religious belief against vaccination, which is  
12 going to be substantially burdened because they can't enroll  
13 their kids, is going to have the same relief.

14 In the absence of extending this injunction statewide and  
15 requiring the defendants to adopt a process and accept a  
16 religious exemption form is going to result in duplicitous  
17 litigation or perhaps the amendment of the pleadings to allow  
18 for a B2 class. We don't believe that that was necessary,  
19 that's why it's been plead the way it was. But we're happy to  
20 go back and take those steps if the Court feels we need to. We  
21 think the law is pretty clear that because this law is  
22 unconstitutional as applied to any religious believer that has  
23 their beliefs substantially burdened by this law and the  
24 injunctive relief would be narrow in that we're not requiring  
25 to actually grant religious exemptions, we're just requiring

1 the defendants to adopt a process that is going to have the  
2 state accept those that this is a hybrid case.

3 We would prefer not to get into overbreadth, although  
4 that's another route by which the Court could extend injunctive  
5 relief, because if we get into overbreadth, you know, that  
6 could require the invalidation of the whole law. We're not  
7 sure that that's necessarily a good idea. Although here, there  
8 are a number, substantial number of laws, applications that  
9 would be unconstitutional under *United States vs. Stevens*,  
10 particularly as to every single religious adherent, and we  
11 heard that there's hundreds of them, that are going to be  
12 affected and have been affected by this law. And it's  
13 unconstitutional as to all of them.

14 Again, I think you can reach the same result coming at  
15 this two or three different ways, and it's the scope of the  
16 injunction relief that we're asking, that there be a religious  
17 exemption process, perhaps a form that is developed, and that  
18 the defendants accept that just as they do medical exemptions.

19 **THE COURT:** Got about five minutes, counsel.

20 **MR. WIEST:** Yes, Your Honor. I did want to allow for  
21 questions by the Court in terms of the Attorney General being a  
22 proper party. I know that they have taken umbrage with that.  
23 We would rely on our papers for that. But just to note that  
24 plainly Dr. Edney is a proper party, plainly the other  
25 defendants are proper parties. And even if the Attorney

1 General -- by the way, the Attorney General, as I understand  
2 it, they are not arguing that they are not a proper party to  
3 the case, they are arguing that they may not be a proper party  
4 to the injunction because they don't have enough connection  
5 with the enforcement of it under *Ex Parte Young*. We have  
6 briefed that extensively. We'll rely on the papers. At the  
7 end of the day, from the plaintiffs' perspective, whether they  
8 are in or out, the Attorney General herself, in terms of within  
9 the -- is an enjoined party to the injunction, the result is  
10 the same from our perspective.

11 Judge, I did want to reserve the rest of my time for any  
12 questions the Court may have on the papers or anything else.

13 **THE COURT:** Well, I think what I'm going to do is I  
14 am going to wait until everybody is finished, and then I have  
15 some questions I will pose for everybody to address.

16 **MR. WIEST:** Absolutely. With that Your Honor, I'll  
17 just reserve the rest of the time for rebuttal.

18 **THE COURT:** You have got about eight minutes total  
19 left.

20 **MR. WIEST:** Thank you.

21 **THE COURT:** Counsel?

22 **MR. SHANNON:** May it please the Court.

23 **THE COURT:** Yes, sir.

24 **MR. SHANNON:** Good morning, Your Honor. Rex Shannon  
25 with the Mississippi Attorney General's office.

1           **THE COURT:** Good morning. Your Honor, we filed a  
2 brief and a supplemental brief in opposition to the plaintiffs'  
3 motion for preliminary injunction. We submit that the motion  
4 should be denied because the four governing factors do not  
5 support a preliminary injunction. I am not going to belabor  
6 those factors here today. They have been fully briefed.

7           I would reiterate that we are not here to question the  
8 sincerity of any of the plaintiffs' religious beliefs. I  
9 believe the plaintiffs' counsel has somewhat overstated the  
10 Attorney General's position on irreparable harm. Just to  
11 clarify, the Attorney General respectfully maintains her  
12 position that the school vaccination statute has to be  
13 construed in conjunction with Mississippi's Religious Freedom  
14 Restoration Act, Mississippi Code 11-61-1. We believe that  
15 when these statutes, the school vaccination statute and state  
16 RFRA statute are read holistically, that the school vaccination  
17 law does not violate the First Amendment because the RFRA  
18 statute requires the State Health Department to offer a  
19 religious exemption option to the plaintiffs. The Attorney  
20 General stands on those arguments in her prior briefing. On  
21 that basis, she respectfully submits that the motion for  
22 preliminary injunction should be denied.

23           Moving on, Your Honor. If the Court is inclined to grant  
24 a preliminary injunction, the Attorney General submits that it  
25 should be limited in scope to the named plaintiffs and directed

1 to the proper defendants. Before I discuss the scope, I just  
2 need to say a word about the distinction between facial and  
3 as-applied challenges. Your Honor, we don't believe the  
4 plaintiffs have met the standard for a facial challenge here  
5 today. The cases before you should be viewed as an as-applied  
6 challenge exclusively. It's clear from the case law that the  
7 overbreadth doctrine doesn't apply here. The Supreme Court has  
8 never applied it to First Amendment free exercise claims. We  
9 have cited the *Sabri* case in our brief to that effect. So to  
10 succeed in a facial attack, the case law is clear that the  
11 plaintiffs have to either show no set of circumstances under  
12 which the school vaccination statute would be valid or that the  
13 statute lacks any plainly legitimate sweep. They have not  
14 shown either of those things here.

15 Your Honor, they state in their supplemental brief that  
16 even if this court grants their request of injunction, it would  
17 leave in place the ability to force the school vaccination  
18 statute against families who are not asserting a religious  
19 objection. The plaintiffs have thus conceded that there are  
20 circumstances in which the school vaccination statute is  
21 constitutionally valid, that is it's valid as to the vast  
22 majority of school children whose parents do not object to  
23 vaccinating their children before enrolling them in school.

24 Additionally, Your Honor, the plaintiffs can't show that  
25 the vaccination statute lacks any plainly legitimate sweep

1 here. For many years, courts have recognized that states have  
2 a compelling interest in preventing the spread of communicable  
3 diseases through mandatory school vaccination statutes. We  
4 have cited the *Workman* case from the Fourth Circuit to that  
5 effect in our brief.

6 Furthermore, Your Honor, the plaintiffs have not  
7 established that the vaccination statute is facially  
8 unconstitutional because, as I say, they don't account for the  
9 effect of Mississippi's RFRA statute. The RFRA statute  
10 requires that they be provided with a religious exemption  
11 option. Your Honor, they simply don't meet the standard for a  
12 facial challenge here in our view. At best, what they could  
13 establish here is an as-applied challenge. At most, their  
14 claim is that some defendants are not applying state law  
15 consistent with the Attorney General's view of Mississippi's  
16 RFRA statute, but that is an as-applied challenge, not a facial  
17 challenge.

18 Furthermore, Your Honor, all of the harms that the  
19 plaintiffs have sought to demonstrate are individualized harms  
20 that are particular to the six named defendants. That's  
21 consistent with the statements they have attached to their  
22 complaint which set out very unique individual harms. It's  
23 also consistent with the testimony that Your Honor has heard  
24 today, all of which involve very specific unique harms to the  
25 individual plaintiffs that testified today. For all these

1 reasons, Your Honor, we submit that the Court should view this  
2 as an as-applied challenge and not a facial challenge.

3 Turning now to the matter of scope. Your Honor, if the  
4 Court is inclined to grant a preliminary injunction, the  
5 Attorney General submits that it should be limited in scope to  
6 the named plaintiffs and directed to the proper defendants. We  
7 have set out a discussion of that in our supplemental briefing,  
8 Your Honor, as a general rule, federal courts lack the  
9 authority to enter so-called universal injunctions. In our  
10 supplemental brief, we've discussed all that, and we have cited  
11 opinions by folks like Justice Thomas, Justice Gorsuch and  
12 others who have outlined problems with universal injunctions in  
13 some detail. The gist of those authorities is that the law  
14 already provides a mechanism for universal relief, and that is  
15 at Rule 23 class action procedure.

16 In their rebuttal, Your Honor, the plaintiffs attempted to  
17 distinguish some of those authorities by characterizing them as  
18 applying only to nationwide injunctions. But Your Honor, the  
19 principles that we have invoked that underlie the theory there  
20 in our supplemental brief apply to any universal injunction,  
21 that is any injunction that extends relief beyond the parties  
22 before the Court.

23 Your Honor, even setting aside the matter of universal  
24 injunctions, it is settled law in Fifth Circuit that an  
25 injunction should be no more burdensome to the defendants than



1 is necessary to provide complete relief to the plaintiffs.  
2 That's the Fifth Circuit *Lion Health* case that we cited. We  
3 also cited the *Califano* and *Madsen* cases from the U.S. Supreme  
4 Court. Any preliminary injunction awarded in this case, Your  
5 Honor, we submit should be limited to the named plaintiffs for  
6 four reasons: Briefly, number 1, this is not a class action.  
7 The plaintiffs have not sought to make it a class action. It  
8 was filed by seven plaintiffs only. One of those plaintiffs,  
9 Mr. Morgan, voluntarily dismissed his claims. It wouldn't be  
10 proper to award the equivalent of class-wide relief when the  
11 plaintiffs have not met their requirements for Rule 23.

12 In their rebuttal, Your Honor, here today as well, the  
13 plaintiffs have talked about other persons who are not before  
14 the Court. But Your Honor, the Court can almost always  
15 envision some other person in a plaintiff's shoes. But if an  
16 attorney's bare assertion about prospective plaintiffs were  
17 enough to warrant an award of relief beyond the parties, then  
18 Article 3 and equitable limitations on federal courts wouldn't  
19 mean a whole lot, practically speaking. Respectfully, Your  
20 Honor, we submit that this Court is bound to deal with the case  
21 at hand and the parties before it, not with prospective claims  
22 by prospective plaintiffs.

23 Secondly Your Honor, all of the plaintiffs' showings for  
24 preliminary injunctive relief are plaintiff-specific tied to  
25 individual unique circumstances.

1 Third, Your Honor, a preliminary injunction granted only  
2 as to the six plaintiffs would provide full and complete relief  
3 here. The plaintiffs cannot overcome the settled law in the  
4 Fifth Circuit that an injunction should be no more burdensome  
5 than necessary to provide the named plaintiffs with complete  
6 relief. Your Honor, the plaintiffs have not submitted any  
7 authority to refute the *Lion Health*, *Califano* or *Madsen* cases  
8 that I mentioned a moment ago, they don't address those  
9 authorities in their rebuttal. They have offered no legitimate  
10 reason to deviate from the established principle of law in the  
11 Fifth Circuit.

12 Fourth, Your Honor, as I mentioned a moment ago, one of  
13 the original plaintiffs, Mr. Morgan voluntarily dismissed his  
14 claims, dropped out of the lawsuit altogether. It wouldn't  
15 make sense to award a preliminary injunction to him or to  
16 anyone else who hasn't shown or even claimed any entitlement to  
17 a preliminary injunction.

18 For all these reasons, Your Honor, any preliminary  
19 injunction should be narrowly tailored and limited in scope to  
20 the named plaintiffs, that is to require the state health  
21 officer and local school authorities to provide a religious  
22 exemption option to the six named plaintiffs exclusively. Your  
23 Honor, the injunction should not be so broad that it would  
24 apply to non-plaintiffs.

25 If the Court is nevertheless inclined to award a

1 preliminary injunction that is not limited to the named  
2 plaintiffs, Your Honor, then in that circumstance we would  
3 submit that the State Department of Health should be afforded a  
4 reasonable amount of time and discretion to develop a religious  
5 exemption policy that is consistent with the religious liberty  
6 protections of Mississippi's RFRA statute.

7       Additionally, Your Honor, the Court should take no action  
8 to otherwise prohibit or impede the administration or  
9 enforcement of the school vaccination scheme set out in the  
10 statute.

11       Finally, Your Honor, any preliminary injunction should be  
12 directed to the proper defendants. Plaintiffs have presented a  
13 proposed order to the Court that would compel certain actions  
14 by the Attorney General within specified time periods. Your  
15 Honor, under Mississippi law the Attorney General has no role  
16 in administering or enforcing the school vaccination statute.  
17 The school vaccination statute expressly provides that  
18 enforcement is the responsibility of the person in charge of  
19 each school. It also gives the state health officer and the  
20 local and county health officers some role in administering,  
21 enforcing the statute. But the Attorney General has no role in  
22 that process, Your Honor.

23       This Court is no doubt familiar with the Fifth Circuit's  
24 opinion in *Okpalobi vs. Foster*. Under *Okpalobi* and its  
25 progeny, principals of standing and sovereign immunity prohibit

1 this Court from enjoining the Attorney General to do anything  
2 in this case. Your Honor, pursuant to *Okpalobi*, a plaintiff  
3 lacks standing to obtain injunctive relief against a state  
4 official when that official didn't cause the alleged harm and  
5 has no legal authority under state law to address the alleged  
6 harm. Both of those things are the case here, Your Honor. The  
7 plaintiffs have not presented any evidence that the Attorney  
8 General was involved in causing the alleged harm, the things  
9 you heard about here today, nor does she have any authority,  
10 more importantly, Your Honor, under state law to address the  
11 plaintiffs' alleged harm. She has no authority under the  
12 statute or otherwise to order Dr. Edney or the local school  
13 officials to offer a religious exemption option to plaintiffs  
14 or to force them to enroll the plaintiffs' children.

15 In *Okpalobi*, Your Honor, the Fifth Circuit held that it is  
16 quote, an elemental fact that a state official cannot be  
17 enjoined to act in any way that is beyond his authority to act  
18 in the first place, end quote. Therefore, as a matter of law,  
19 Your Honor, this court, cannot enjoin the Attorney General to  
20 provide a religious exemption option.

21 Your Honor, under *Okpalobi* standing jurisprudence, the  
22 plaintiffs cannot show causation or address ability vis-a-vis  
23 the Attorney General; therefore, they lack standing to assert  
24 any claim for injunctive relief against her.

25 Relatedly, Your Honor, because the Attorney General is not

1 specifically tasked with enforcing the school vaccination  
2 statute, she lacks the requisite enforcement connection to  
3 support any injunction against her. For that reason, Your  
4 Honor, any claim for injunctive relief against her is also  
5 barred by sovereign immunity. For several years, there has  
6 been some confusion in the Fifth Circuit about the meaning of  
7 enforcement connection in the sovereign immunity context.  
8 However, Your Honor, following a series of recent cases the  
9 Fifth Circuit in March of last year provided a list of what it  
10 referred to as guideposts for applying the sovereign immunity  
11 analysis in this context. The case I am referring to is *Texas*  
12 *Alliance for Retired Americans v. Scott* 28 F.4th 669, 28 F.4th  
13 669. It's a 2022 Fifth Circuit opinion. In the *Scott* case,  
14 Your Honor, the Fifth Circuit held that the enforcement  
15 connection that is required to overcome sovereign immunity  
16 requires the Court to find three things: Number 1, that the  
17 state official has, quote, more than the general duty to see  
18 that the laws of the state are implemented, end quote.

19 Number 2, that the state official has, quote, the  
20 particular duty to enforce the statute in question and a  
21 demonstrated willingness to exercise that duty, end quote.

22 And number 3, that the state official must, in fact,  
23 compel or constrain some other official to obey the challenged  
24 law. And the Fifth Circuit in *Scott* said that the analysis of  
25 that second factor is provision by provision, meaning that the

1 state official must enforce, quote, the particular statutory  
2 vision that is the subject of the litigation, end quote.

3 Otherwise, Your Honor, any claim for injunctive relief against  
4 that official is barred by sovereign immunity.

5 Your Honor, none of these three factors is established  
6 here as to the Attorney General. She is the state's chief  
7 legal officer. She is charged with a general duty to manage  
8 litigation on the state's behalf. But she has no particular  
9 duty to enforce the school vaccination statute. That statute  
10 vests enforcement authority solely in the local school  
11 officials, the state health officer. It does not authorize or  
12 require enforcement by the Attorney General. The plaintiffs  
13 have not pointed to any statutory authority that charges the AG  
14 with the particular duty to enforce the school vaccination  
15 statute.

16 Furthermore, Your Honor, the plaintiffs have not presented  
17 any evidence that the Attorney General has ever enforced or  
18 threatened to enforce the school vaccination requirements  
19 against them or anyone else. Relatedly, Your Honor, she has  
20 not compelled or constrained Dr. Edney or any of the local  
21 school officials to enforce the school vaccination statute. I  
22 would note as an aside, the Fifth Circuit has been clear that  
23 simply offering advice or guidance or interpretive assistance,  
24 none of those things constitute a compulsion or constraint in  
25 this context. That's *Richardson v. Flores*, 28 F.4th, 649, a

1 Fifth Circuit case from last year.

2 For all these reasons, Your Honor, pursuant to controlling  
3 Fifth Circuit precedent, the plaintiffs claim for injunctive  
4 relief against the Attorney General is barred by sovereign  
5 immunity.

6 In their rebuttal that they filed last week, the  
7 plaintiffs don't separately address standing as the Fifth  
8 Circuit did in *Okpalobi*. Instead, they conflate standing with  
9 sovereign immunity and focus exclusively on sovereign immunity.  
10 Your Honor, they argue under *Ex Parte Young*, the Attorney  
11 General should be subject to an injunction for three reasons,  
12 none of which has any merit in light of the *Scott* case that I  
13 just discussed, but I will briefly address each one in turn.

14 First of all, Your Honor, they argue that as the state's  
15 chief legal officer, the AG has the general duty to enforce the  
16 school vaccination statute, notwithstanding the absence of any  
17 particular duty imposed by any statute. In support of that  
18 argument, they cited Mississippi Code Section 751, as well as  
19 the *City of Austin v. Paxton*, Fifth Circuit case. Your Honor,  
20 Section 751 declares the AG to be the state's chief legal  
21 officer. It gives her the authority to manage all litigation  
22 on the state's behalf. It also charges her with intervening to  
23 argue the constitutionality of any statute when notified of a  
24 challenge. But Your Honor, that is a general duty statute. It  
25 says nothing about any particular duty to enforce specific

1 laws, and certainly nothing about the school vaccination  
2 statute.

3 Your Honor, the plaintiffs' reliance on the *City of Austin*  
4 case for the proposition they have cited it for is likewise  
5 misplaced. The Fifth Circuit in *Scott* makes it clear that a  
6 general duty to enforce state law is not enough to overcome  
7 sovereign immunity, rather it must be shown that the Attorney  
8 General has a particular duty to enforce the vaccination  
9 statute, and that she's either exercised that authority or has  
10 threatened to exercise it.

11 **THE COURT:** You have about five minutes, counsel.

12 **MR. SHANNON:** Thank you, Your Honor. The plaintiffs  
13 simply can't make that showing here, thus their first argument  
14 fails.

15 Briefly, Your Honor, the second argument, they say the AG  
16 is required to enforce the school vaccination statute at  
17 Dr. Edney's request pursuant to Section 7537 of the Mississippi  
18 Code. Again, that is a general duty statute. It does not  
19 impose any particular duty on the AG to enforce the vaccination  
20 statute.

21 Your Honor, with regard to the prospect of some  
22 enforcement action by a local district attorney, which they  
23 have argued in some of their briefing, the Supreme Court has  
24 recognized that unlike in the federal system, the Attorney  
25 General is not the local D.A.'s boss, that is the AG has no



1 authority to direct or control or override the official actions  
2 of a local district attorney and no authority over him or her.  
3 That's *Williams v. State*, 184 So.3d, 908, Mississippi Supreme  
4 Court case.

5 Your Honor, they cited a Sixth Circuit case, they say it  
6 was cited favorably, the *Russell* case. They say it was cited  
7 favorably in the *City of Austin* case, but the Fifth Circuit  
8 actually cited *Russell* for an entirely different proposition  
9 than the plaintiffs are citing it for here. It is not  
10 controlling in any event and has to yield to the Fifth Circuit  
11 opinion in *Scott*.

12 Your Honor, the final argument, though, raises that  
13 *Okpalobi's* statement that all that is needed to overcome  
14 sovereign immunity is a sufficient indicia of enforcement  
15 powers found elsewhere in the laws of the state.

16 Your Honor, unlike the standing analysis in *Okpalobi*, the  
17 11th Amendment sovereign immunity analysis in that case only  
18 received plurality support. *Okpalobi* was decided in 2001.  
19 It's statement about sufficient indicia has clearly been  
20 superceded by the Fifth Circuit's recent line of cases leading  
21 up to the *Scott* case from last year that I discussed a moment  
22 ago. Therefore, the plaintiff's final argument for overcoming  
23 sovereign immunity likewise fails.

24 Your Honor, for all the reasons that I have just  
25 discussed, any injunctive relief against the Attorney General

1 is barred, not only by a lack of standing but also by sovereign  
2 immunity. If a preliminary injunction is granted in this case,  
3 it should be directed to the proper defendants, specifically to  
4 the state health officer, to offer the named plaintiffs the  
5 option of religious exemption to the school vaccination  
6 requirement. It should further direct the applicable county  
7 and local health officers and local school officials to honor  
8 and recognize any religious exemption so granted to the  
9 children of the named plaintiffs.

10 In conclusion, Your Honor, for all these reasons and those  
11 set forth in the Attorney General's briefing filed in this  
12 matter, she respectfully requests that the Court would deny the  
13 motion for preliminary injunction. Alternatively, Your Honor,  
14 if Your Honor is inclined to grant a preliminary injunction,  
15 the Attorney General respectfully requests that it be limited  
16 in scope, narrowly tailored to award relief to the named  
17 plaintiffs only, and that it be directed to the proper  
18 defendants exclusively and not to the Attorney General. Thank  
19 you, Your Honor.

20 **THE COURT:** Thank you. Anything from Dr. Edney?

21 **MR. BENTLEY:** Your Honor, as you know Dr. Edney has  
22 not participated in the briefing on the preliminary injunction.  
23 I don't have any arguments to present. I do have comments that  
24 touch on the scope issue, but that may be better reserved for  
25 your questioning than a presentation.

1           **THE COURT:** Well, let me hear what you have to say on  
2 that issue because I have something that's come up.

3           **MR. BENTLEY:** Good morning, Your Honor, and may it  
4 please the Court.

5           **THE COURT:** Yes, sir.

6           **MR. BENTLEY:** As I was just saying, Your Honor,  
7 Dr. Edney takes his guidance on the interpretation of state law  
8 from the Mississippi Attorney General. The Attorney General  
9 has advised us and the Court that the Mississippi Religious  
10 Freedom Restoration Act, when construed with the school  
11 vaccination act, provides for a religious exemption under  
12 Mississippi law. Dr. Edney does not disagree with that  
13 interpretation, obviously.

14           What Dr. Edney has been wrestling with, and that's what I  
15 just want to offer the Court, is what an exemption process and  
16 procedure might look like. There were nine bills introduced by  
17 the various legislators in this past Mississippi legislative  
18 session. Those bills offer varying procedures and processes  
19 from something as simple as a signed statement, to a notarized  
20 affidavit, to a form issued by the Department of Health. Some  
21 of the bills would've required education for the parents on the  
22 risks to their own children and to other children in not  
23 seeking vaccination. Some would've provided removal authority  
24 to exclude unvaccinated children in the event of an outbreak or  
25 emergency. There are some with reporting requirements. There

1 are some that require the Department of Health to undertake  
2 promotional activities in the event a religious exemption is  
3 provided to educate and inform people about the risks of not  
4 receiving vaccines. And then there are some that even would  
5 provide a moral or philosophical exemption separate and apart  
6 from a religious exemption. So there are a lot of policy  
7 considerations that even the legislature wasn't able to agree  
8 on this term that Dr. Edney is considering and wrestling with.

9 You also have the issue of 130 school districts across the  
10 state that has been discussed would be responsible for  
11 enforcing whatever it is that either this Court directs or  
12 Dr. Edney would issue under the Mississippi RFRA. So there are  
13 local interests and policy concerns at play as well.

14 And then we have also been looking at what other states  
15 have done. As the plaintiffs have pointed out, over 40 states  
16 in the country have a religious, moral or philosophical  
17 objection exemption, but those are certainly not uniform. They  
18 all come down to local policy choices, things like I have just  
19 been discussing that various states have wrestled with.

20 So I just wanted to offer that because I do think it  
21 relates to scope and I am happy to answer any questions that  
22 Your Honor has.

23 **THE COURT:** Just real briefly, and I think you  
24 basically said this, but just so we're clear, so none of these  
25 proposals passed the legislature, none of them got out?

1           **MR. BENTLEY:** That is correct. They all died in  
2 committee on the January deadline for reporting out.

3           **THE COURT:** Okay. And you mentioned that the health  
4 officer has been looking at this issue to try and come up with  
5 what a process would look like. And I think one of the  
6 questions that has come up in terms of the scope, I think, as  
7 the Attorney General's arguing is if I do grant a preliminary  
8 injunction to allow sufficient time for the Department of  
9 Health to come up with a process, what kind of timeline you  
10 think you're talking about if that's what I end up doing?

11           **MR. BENTLEY:** I guess without -- I don't know, is the  
12 answer to that. Dr. Edney has not, and his staff have not told  
13 me what a reasonable timeline would be. I guess I would say  
14 the 2023/'24 school year is quickly approaching. That may be  
15 something Your Honor is considering. That would give us  
16 roughly three months. Again, Dr. Edney has not said that he  
17 can do it that quickly, but that's something that's in my mind.

18           **THE COURT:** In terms of, and you may not know the  
19 answer to this question, but in terms of the way the medical  
20 exemption process works, how far in advance are those  
21 submitted? Is there a deadline -- let's say it was going to be  
22 from the 2023/2024 school year, how far in advance are the  
23 medical exemption requests typically submitted, or is that a  
24 rolling process that takes place throughout the year?

25           **MR. BENTLEY:** As I understand the process, you have

1 to get -- your physician has to issue the letter or the  
2 attestation that your child is entitled to an exemption. You  
3 have to get that certification and provide it to the school at  
4 the time you submit all the other enrollment application  
5 materials, which is really at the end of July for most schools,  
6 as I understand it, is sort of the deadline for enrollment  
7 applications.

8 **THE COURT:** Okay. I may have some more questions  
9 when we're finished, but let me have -- let the plaintiffs have  
10 their opportunity for rebuttal. Thank you.

11 **MR. BENTLEY:** Yes, Your Honor. Thank you.

12 **THE COURT:** Counsel, you have eight minutes  
13 remaining.

14 **MR. WIEST:** Thank you, Your Honor. I think from the  
15 plaintiffs' perspective, Your Honor, what we would like to  
16 spend just a little bit of time rebutting is the scope issue.  
17 And again, I think the driving decision on that literally just  
18 came out of the Fifth Circuit about a week and a half ago on  
19 March 23rd in *Feds for Medical Freedom vs. Biden*. And in that  
20 case, the Fifth Circuit upheld and, in fact, said it was proper  
21 to extend an injunction beyond the named plaintiffs because,  
22 frankly, the violation of the law extended beyond the named  
23 plaintiffs. In part, that was due to workability. Well,  
24 there's workability here, workability issues here on how you  
25 would do that.

1 I think we have just begun a discussion that's been  
2 helpful in terms of the path forward, Your Honor. And again,  
3 we think it's appropriate for Dr. Edney to probably come up  
4 with the process and the forms and how to do that. And I think  
5 having that in place prior to the 2023/2024 school year is  
6 probably an appropriate deadline. You know, would some of our  
7 named plaintiffs like to move sooner, we would, but we  
8 understand we're dealing with government, and government,  
9 unfortunately, nothing is fast, and sometimes Dr. Edney may not  
10 be the only decision maker. And I think it makes all the sense  
11 in the world, Your Honor, to put a deadline on this by the end  
12 of July to have this process in place to allow for enrollment  
13 for the 2023/2024 school year.

14 I think Dr. Edney's counsel has appropriately observed  
15 that there's a lot of different ways to skin this cat and a lot  
16 of states have taken a different approach. I'm based out of  
17 Kentucky, and they have a form and it has to be notarized.  
18 Some states it's a written statement. Some states it's very  
19 simple. There's a process next door in Alabama that some of  
20 these plaintiffs have gone through where they have to go to a  
21 local health department and fill out a form, sometimes  
22 undertake an interview. There's a lot of ways to do that. I  
23 think the process is what's important, and the fact that it  
24 gets done and the fact that the state allows for it in the same  
25 way that they allow for the secular exemptions to relieve the

1 constitutional violation. And the constitutional violation  
2 extends to every single religious believer whose beliefs are  
3 substantially burdened.

4 The Attorney General has indicated that there's been no  
5 proof that it extends beyond the plaintiffs. Your Honor, that  
6 ignores the testimony that's been adduced here today. You have  
7 heard from Pastor Perkins, he has parents that want to enroll  
8 their children in his school and they can't do it. That's an  
9 impact to him and that extends beyond him. You have heard  
10 about a large parental group that has been operating in this  
11 state attempting to work with the legislature, many of whom are  
12 sitting in this courtroom. Again, the violation extends beyond  
13 them and so should the injunctive relief. And I think we're  
14 getting to where, I think, what the Court has wrestled with,  
15 which is scope.

16 At the end of the day, sometimes we deal with the  
17 situation as constitutional litigators where you name certain  
18 defendants in 1983 *Ex Parte Young* prospective relief injunction  
19 actions, and this funny thing sometimes happens where they all  
20 start pointing the finger at each other where they're saying, I  
21 am not the enforcer, he is the enforcer, and there's no  
22 enforcer at the end of the day, and we wanted to avoid that.

23 At the end of the day, I don't think from the plaintiffs'  
24 perspective whether or not the Attorney General is a party  
25 enjoined is a hill that we need to die on. And we're not --



1 we're asking that -- plainly, everybody agrees Dr. Edney is an  
2 appropriate defendant. The injunctive relief can be primarily  
3 directed at her. Obviously, the local prosecutor is acting in  
4 concert. The local principals acting in concert under Rule 65,  
5 that would be sufficient for our purposes. And I think the  
6 timeline that we just discussed to have this in place prior to  
7 the 2023/2024 school year at the end of July would be an  
8 appropriate timeline that would be acceptable to the plaintiffs  
9 as well, Your Honor.

10 Certainly, we think *Feds for Medical Freedom vs. Biden*  
11 speaks to these issues, particularly at pages 47 to 50 on the  
12 Lexis citation. It's not been fully published in that 4th yet  
13 because it is a recent decision. I would observe, Your Honor,  
14 that that's an *en banc* decision. As you're aware, that *en banc*  
15 decision has substantial weight beyond simply a panel decision.  
16 That's the decision of the entire Fifth Circuit, and I think  
17 that decision stands for the proposition that the injunction  
18 can and in these circumstances should extend to all religious  
19 believers. And frankly, if you're developing a process and  
20 Dr. Edney is developing a process for the six named plaintiffs,  
21 and Pastor Perkins' school and the families that are going to  
22 attend that school, well that same process would work for all  
23 the other plaintiffs. And by the way, everyone agrees that the  
24 Attorney General seems to think that RFRA requires a religious  
25 exemption process. Well, you have seen the department's

1 website today, Exhibit 2, plainly, there is no religious  
2 exemption process notwithstanding MRFRA that the state  
3 currently acknowledges and thus the need for injunctive relief.  
4 And, frankly, there's that whole issue with the Mississippi  
5 Supreme Court decision to, the *Brown* decision, that also puts a  
6 real wrinkle in this, even notwithstanding the Attorney  
7 General's opinion, can they do it without a federal court  
8 invoking 1983 jurisdiction and saying, yes, you have to have a  
9 religious exemption because the Supreme Court of the United  
10 States says so under *Fulton* --

11 **THE COURT:** You've got three minutes.

12 **MR. WIEST:** So again, Your Honor, I think at the end  
13 of the day we're getting to where we need to be. I am happy to  
14 answer any further questions. We would rely primarily on the  
15 briefing that's been already completed and any questions the  
16 Court may have.

17 **THE COURT:** Okay. Thank you, counsel. I do have  
18 some questions.

19 **MR. WIEST:** Should I stay up --

20 **THE COURT:** You can be returned. They are going to  
21 be generally addressed to everybody, some may apply to others,  
22 but I'll give each of you a chance to address them as I ask  
23 them.

24 One of the issues was just touched upon, and primarily the  
25 Attorney General's argument is the scope of this, if there is

1 an injunction granted, should be limited only to the named  
2 plaintiffs. How, in practice, would that work if I decide that  
3 it's only something that should be applied for the named  
4 plaintiffs, I enter an order, and then all of a sudden the  
5 named plaintiffs are allowed to apply for a religious exemption  
6 and anyone else who wants one has to file a lawsuit? How would  
7 that work?

8 **MR. SHANNON:** Your Honor, on behalf of the Attorney  
9 General, I think we would just anticipate that the order would  
10 be crafted in such a way that the relief granted would  
11 specifically be granted only to the named plaintiffs, that it  
12 would direct and instruct the state health officer to offer  
13 those folks a religious exemption option. I don't believe, if  
14 I read their papers correctly, that they're asking that they be  
15 ordered to enroll in school, but merely that they be given the  
16 option. So I think the Court's order could reasonably  
17 accommodate that by limiting the relief requested to the  
18 specific plaintiffs in the case, Your Honor.

19 **THE COURT:** Anyone want to comment on that?

20 **MR. WIEST:** Your Honor, obviously the plaintiffs  
21 believe there needs to be a process.

22 **THE COURT:** Stand up when you're speaking.

23 **MR. WIEST:** Sorry, Your Honor. The plaintiffs  
24 believe there needs to be a process, and if the process is  
25 extended -- and there is a process and there's a form that's

1 developed, for practical reasons there would be no reason to  
2 limit it to these six named plaintiffs. The violation extends  
3 to every single religious believer whose rights have been  
4 substantially burdened, who the Attorney General believes needs  
5 to be -- have that accommodation anyways under MRFRA. And the  
6 notion that we're going to develop a process for six named  
7 plaintiffs, and I suppose -- I don't think that that works  
8 anyway because we're also dealing with a school here, right,  
9 Pastor Perkins' school. I'm just thinking through this. As a  
10 practical matter, and this is what I think the Fifth Circuit  
11 wrestled with *Feds for Medical Freedom vs. Biden* where they  
12 said no, no, no, there's no practical way with this vaccine  
13 exemption for you not to extend it to everyone. Are we going  
14 to say -- how does Brandi Renfroe go into a Mississippi school  
15 and say, I have got this special exemption, I am one of the six  
16 people, here is this court order, and the school is going to  
17 allow them in. I'm guessing the school might somehow -- just  
18 from an administration perspective, I don't know how you would  
19 do that without allowing everyone who is in the same boat to  
20 appropriately obtain the same relief. And if the Mississippi  
21 Attorney General is suggesting that it's required under MRFRA,  
22 I don't understand why the Mississippi Attorney General would  
23 want to deny those same rights and benefits to every other  
24 Mississippian whose religious freedom is being equally denied  
25 by this process as it exists today.

1           **THE COURT:** Well, you do make an interesting point as  
2 far as Pastor Perkins is concerned. If it's limited to the  
3 named plaintiffs, then that means he can apply to have his  
4 child enrolled, while at the same time as headmaster denying  
5 that to anyone else in his community who wants to apply to come  
6 to school there. Any comment on that, counsel?

7           **MR. SHANNON:** Your Honor, on behalf of the Attorney  
8 General, we have nothing further to add on this point. I think  
9 we have said everything we want to say in our briefing, Your  
10 Honor.

11           **THE COURT:** Okay.

12           **MR. BENTLEY:** Your Honor, I guess, a couple things,  
13 one just housekeeping. I did, while you were having that  
14 discussion, look at registration dates just for Biloxi public  
15 schools, Gulfport public schools. They are not posted yet for  
16 this coming school year, but they were July 15th through 17th,  
17 and then drop-dead date of July 31 for this current school  
18 year. So that's probably roughly what they will be.

19           As far as the scope, I guess from Dr. Edney's perspective,  
20 again, I would need to consult with him on a timeline and  
21 respond to Your Honor. If you're asking us to create a  
22 statewide -- a religious exemption that satisfies and has input  
23 from all of the necessary participants or stakeholders, that's  
24 a big undertaking. We can come up with a policy, I think, but  
25 then we would need to discuss it with school districts, the

1 Department of Education, other parties that need to be  
2 involved.

3           **THE COURT:** Now, counsel, you mentioned MRFRA. I  
4 want to get back to that. I believe the Attorney General was  
5 taking the position that, at most, what the plaintiffs in this  
6 case have is an as-applied challenge because MRFRA, by  
7 operation of law, I suppose, creates a religious exemption and  
8 therefore there is no challenge to the facial validity of the  
9 vaccination statute. Just to be sure I am clear on your  
10 position, you also said in your briefs that without MRFRA, read  
11 all by itself, the vaccine law would not survive strict  
12 scrutiny. So isn't this facial argument that you're making,  
13 doesn't that hinge entirely on whether MRFRA, in fact, applies  
14 by operation of law to fix any problems with the vaccine law?

15           **MR. SHANNON:** Your Honor, certainly when MRFRA is  
16 read in conjunction with the school vaccination statute,  
17 there's no question that this law substantially burdens  
18 religious freedom. So under MRFRA, then it implicates strict  
19 scrutiny. We believe there's compelling governmental interest,  
20 but we don't believe that it's tailored presently to the least  
21 restrictive means based on the presence of the discretionary  
22 medical exemption. We agree with that.

23           Notwithstanding that, we believe even reading the school  
24 vaccination statute by itself does not support a facial  
25 challenge because in many, many applications, and I would argue

1 the vast majority of applications, the application of that  
2 statute is indeed constitutional; in other words, any parents  
3 who do not object on religious grounds to vaccinating their  
4 children, they would have no problem with that statute. That  
5 statute would not violate their constitutional rights. The  
6 case law is such that if, indeed, there are constitutionally  
7 valid applications of the statute, then that precludes any  
8 facial challenge. This challenge would have to be on an  
9 as-applied basis.

10 **THE COURT:** Okay.

11 **MR. SHANNON:** May I confer, Your Honor?

12 **THE COURT:** Yes.

13 **MR. SHANNON:** Your Honor, as well as what I have  
14 argued, they have also -- the plaintiffs have also requested  
15 that the Court grant them a mandatory injunction to engraft  
16 this option, religious exemption option onto the existing  
17 statute. Therefore, we believe it is exclusively an as-applied  
18 challenge for all those reasons, Your Honor.

19 **THE COURT:** Okay. Counsel?

20 **MR. WIEST:** A couple points back, Your Honor. The  
21 United States Supreme Court has been very clear, and I am going  
22 to quote -- they quote from *United States vs. Stevens* on this  
23 facial issue because the Attorney General is applying what I  
24 would describe as a general facial challenge that is  
25 inapplicable. Now, they say, well, it doesn't apply to free

1 exercise. Well, that's not what the United States Supreme  
2 Court has said. The U.S. Supreme Court has said, this facial  
3 challenge applies to the entire First Amendment, and I am  
4 quoting from *United States vs. Stevens*, 55 U.S. 460 at 473.  
5 "In the First Amendment context, however, this court recognizes  
6 a second type of facial challenge, and that is when there is a  
7 substantial number of its applications that are  
8 unconstitutional judged in relation to the statute's plainly  
9 legitimate sweep." They didn't limit it to free speech. It  
10 was "in the First Amendment context." That's the language we  
11 read from *Stevens*.

12 So the test that they are applying for facial I think is  
13 inappropriate for First Amendment cases. But we have  
14 identified, and the Supreme Court spoke to this in *Citizens*  
15 *United*, the hybrid constitutional challenge. This statute is  
16 unconstitutional as applied to each and every person who has a  
17 sincerely held religious belief. And given that, the  
18 appropriate scope of the injunction should extend to all the  
19 people to whom it is facially invalid to, which is all the  
20 people who have a sincerely held religious belief.

21 I did want to address just briefly, Your Honor, the MRFRA  
22 issue. We would love to agree with the Attorney General that  
23 MRFRA requires a religious exemption. We love to take that  
24 position. We think as a matter of state law, though, they  
25 can't get there with the Mississippi Supreme Court having



1 decided that the 14th Amendment doesn't allow for religious  
2 exemption to vaccine requirements. That monkey in the wrench  
3 is why I think we're sitting in federal court right now seeking  
4 1983 relief on a First Amendment free exercise challenge.

5 And I don't know at the end of the day that absent that  
6 kind of injunctive relief third parties that have an interest  
7 in maintaining the status quo may very well go into state  
8 court, seek to uphold *Brown* and undermine the position the  
9 Attorney General has taken on this case.

10 And I would leave the Court with this: If creating a  
11 process for religious exemptions, it is nonsensical if limited  
12 to six people. The relief here is the process. And the  
13 process could only be used -- that process could be used by  
14 others. It's a natural result and would be unnatural to limit  
15 it to six plaintiffs for a variety of reasons. Now, the  
16 timing, I think, we understand runway, and I think by mid-July,  
17 I think that makes sense. It makes no sense to have to require  
18 all of these other plaintiffs or potential plaintiffs to have  
19 to go into court to seek the same exact relief on largely the  
20 same facts. By the way, Your Honor, it doesn't turn on  
21 individual circumstances. It doesn't turn on whether or not  
22 Brandi Renfro has to cross from Alabama to Mississippi every  
23 day. It doesn't. The fact of the matter is this coercive  
24 process applies equally to every single person that has a  
25 sincerely held religious belief against vaccination, but no

1 process that similarly granted the medical exemptions. Again,  
2 the violation is not limited to the named plaintiffs, the  
3 relief should not be limited to the named plaintiffs either.  
4 Thank you, Your Honor.

5 **THE COURT:** I guess the other question I have is  
6 MRFRA, assuming that it means what the Attorney General is  
7 saying it means with respect to religious exemptions, why  
8 haven't any been granted? Why are people not getting them?

9 **MR. SHANNON:** Your Honor, that's a question I would  
10 have to refer to Dr. Edney's counsel.

11 **MR. BENTLEY:** Thank you so much.

12 **THE COURT:** I figured that might be where this ended  
13 up.

14 **MR. BENTLEY:** Your Honor, I have to say until this  
15 litigation began there was no pronouncement about the  
16 interaction of Mississippi RFRA and the school vaccination law.  
17 That's not a fault of the Attorney General. No one ever sought  
18 a legal opinion. As far as I can tell, and this is a ripeness  
19 or standing issue, I guess, it's not really before the Court,  
20 but no one went all the way through the process to exhaust  
21 before a school board this question where a school board  
22 attorney could say, let's go ask the Attorney General. If that  
23 had happened, I think the process would've played out through  
24 the typical opinion writing approach. It hasn't happened. We  
25 learned about it in this litigation. And candidly, for the

1 reasons I have discussed, we just haven't been able to snap our  
2 fingers and create a policy.

3 **THE COURT:** You alluded to my next question: So as  
4 far as you know, or the Attorney General, no one has ever asked  
5 for an Attorney General opinion on this, on this question?

6 **MR. SHANNON:** Your Honor, I honestly do not know if a  
7 request has been made for an official opinion on that. I am  
8 not aware of one personally. None has come up in the course of  
9 this litigation in the context of any of our research, so I  
10 believe the answer would be no.

11 **THE COURT:** But as counsel for plaintiff pointed out,  
12 make sure I am stating this correctly, if I am not, then  
13 correct me by all means, but it sounds like even if one had  
14 been requested, and one were issued that took the position that  
15 you're taking here, you still run into this problem with this  
16 earlier state Supreme Court decision, is it *Brown* I think, was  
17 it *Brown*, that said allowing a religious exemption violates the  
18 14th Amendment?

19 **MR. SHANNON:** Yes, Your Honor, the *Brown* case. It's  
20 a 1979 Mississippi Supreme Court case, if I'm not mistaken. I  
21 believe we're all in agreement, and our briefing reflects as  
22 much, that there's no way *Brown* would be upheld in today's  
23 time, particularly in light of the *Fulton* cases and recent U.S.  
24 Supreme Court cases that would essentially preempt the holding  
25 in *Brown*, Your Honor. So we don't see *Brown* as an impediment

1 to the view of MRFRA that we have presented to the Court in the  
2 case.

3 **MR. WIEST:** If I may, briefly, respond to that, Your  
4 Honor. We're in federal court, it's Mississippi interpreting  
5 Mississippi State law, albeit under a federal standard. It's  
6 been a while since I have looked at this, but I think  
7 Mississippi Supreme Court case law is binding as to Mississippi  
8 law in federal court until or unless it's actually been  
9 overturned by the Mississippi Supreme Court. So I think we're  
10 stuck with *Brown*, which is what we have been wrestling with  
11 throughout this litigation.

12 **THE COURT:** Right. I guess what I was trying to get  
13 at is I don't know that it binds me in the context of what  
14 we're talking about here today.

15 **MR. WIEST:** Right.

16 **THE COURT:** But it does, I would think, put the  
17 Attorney General in a position of -- I mean, we all may agree  
18 that it wouldn't survive today, perhaps, but the Attorney  
19 General is not at liberty to overrule the state Supreme Court  
20 decision, right?

21 **MR. SHANNON:** That's correct, Your Honor. I would  
22 just add one point of clarification. In terms of an opinion  
23 being requested at this time of the Attorney General regarding  
24 this matter, as a matter of policy the Attorney General's  
25 office does not issue opinions in matters that are pending in

1 litigation. So it's not something that could occur right now.

2 **THE COURT:** As I appreciate the process, someone has  
3 to ask for it, it's not something the Attorney General just  
4 goes around doing *sua sponte*?

5 **MR. SHANNON:** That is correct.

6 **THE COURT:** Let's get back to MRFRA here. I guess  
7 the question of whether it grants or allows a religious  
8 exemption, where does the statute specifically say that, that  
9 it operates to grant options for religious exemptions to any  
10 state law that substantially burdens a person exercising  
11 religion? I don't have the whole statute right in front of me,  
12 but I have a couple excerpts here, and I don't see that precise  
13 language in MRFRA itself.

14 As I read it, and I am just looking here to point out if  
15 -- because I don't have the whole statute in front of me, but  
16 11-61-1, subparagraphs 5 and 6. Paragraph 5 says, the  
17 government shall not substantially burden a person's exercise  
18 of religion even if the burden results from a rule of general  
19 applicability except as provided in paragraph B of this  
20 subsection. Paragraph B says, the government may substantially  
21 burden a person's exercise of religion only if it determines  
22 that application of the burden to the person is in furtherance  
23 of a compelling governmental interest and is the least  
24 restrictive means of furthering that compelling governmental  
25 interest.

1 Paragraph 6: A person whose religious exercise has been  
2 burdened in violation of this section may assert that violation  
3 as a claim or defense in a judicial proceeding and obtain  
4 appropriate relief against the government.

5 Again, that's what I am looking at. I don't have the  
6 whole thing in front of me, but to me I don't see where it  
7 specifically says -- to me this is written in terms of a  
8 prohibition against the government, things it's not supposed to  
9 do, or if it's going to do them a burden it has to meet to  
10 justify it. And that if someone feels burdened, they can  
11 assert a lawsuit or raise it as a defense to a lawsuit in a  
12 judicial proceeding. And we all know that when we're looking  
13 at statutory interpretation we start off with the plain text of  
14 the statute. And I just don't see where it says that there.  
15 Is there a part of the statute that specifically says that or  
16 was that something that's kind of being read into it in terms  
17 of really what the intent was behind it?

18 **MR. SHANNON:** Your Honor, it's the latter.  
19 Obviously, the language does not appear in 11-61-1, which does  
20 not expressly reference the vaccination statute in and of  
21 itself. However, as Your Honor rightly points out, Section 5A  
22 and B are the sections of the statute that the Attorney General  
23 relies upon on the basis of her interpretation that because the  
24 lack of a religious exemption obviously substantially burdens,  
25 as you've heard here today, religious practice and religious

1 freedom that under the MRFRA statute, the government, the state  
2 must show that it satisfies strict scrutiny. There may be some  
3 disagreement over whether this is in furtherance of a  
4 compelling governmental interest, but notwithstanding that 5B  
5 Subsection 2 says it must be the least restrictive means of  
6 furthering that compelling governmental interest.

7 The Attorney General does not view the current statute as  
8 being the least restrictive means because it provides for the  
9 discretionary medical exemption without the religious  
10 exemption, which the *Fulton* case and others lately in these  
11 recent times particularly have said does not satisfy strict  
12 scrutiny. So it is an interpretation of Section 5A and B in  
13 answer to Your Honor's question.

14 **THE COURT:** Okay. Any comment from plaintiffs on  
15 that?

16 **MR. WIEST:** Obviously, Your Honor, MRFRA tracks  
17 particularly here because we have got secular exemptions,  
18 discretionary secular exemptions. It really is an overlay of  
19 the First Amendment and the *Fulton* requirement. We agree that  
20 plainly this medical exemption discretionary system that they  
21 have got in not allowing a religious exemption violates the  
22 First Amendment, that's why we're here.

23 There are several problems: One, to obtain relief under  
24 the statute you have to go into court. Two, the Department of  
25 Health, the State Department of Health has not allowed

1 religious exemptions and, in fact, has gone so far as to put in  
2 bold on their website you can't get one. And three we have  
3 this entire problem of this application of this statute to  
4 vaccines being invalid under binding Mississippi Supreme Court  
5 precedent in *Brown vs. Stone*. So I think there's three  
6 responses that we have to it. I don't think that it's the out  
7 the Attorney General thinks for all of those reasons, that's  
8 why we're here in federal court seeking an injunction.

9           **THE COURT:** I guess, and it's been touched upon  
10 again, but just so I'm clear on the scope thing. I am  
11 struggling a little bit with the arguments in terms of if, you  
12 know, if it's the state's position or the Attorney General's  
13 position that MRFRA does apply to create a religious exemption  
14 to the vaccine requirement, that's already the law in  
15 Mississippi, then why wouldn't that apply to all Mississippians  
16 already? And it just seems to be a little bit of an  
17 inconsistent -- kind of meets itself coming and going it seems  
18 on that. And that's one thing I am having a little bit of a  
19 struggle with, is if that is the law and if it already provides  
20 for that, then why would the injunction -- and you may go back  
21 to some of the Supreme Court cases and Fifth Circuit cases you  
22 have argued already, but why would the injunction or exemption  
23 requirement option for requesting exemption be limited only to  
24 the named plaintiffs in this case when the law already says  
25 everybody should be allowed to get one?



1           **MR. SHANNON:** Your Honor, the Attorney General takes  
2 the view that the Court is nevertheless bound by Article 3  
3 limitations, and limitations on the equitable remedies that a  
4 federal district court can provide. We would stand on those  
5 arguments as presented in our briefs to that point, Your Honor.

6           **THE COURT:** Okay. Any comment?

7           **MR. WIEST:** Your Honor, I'm going to go back to *Feds*  
8 *for Med. Freedom vs. Biden*, the *en banc*. And I'm going to read  
9 because I think you have just articulated one of the concerns  
10 that the Fifth Circuit expressed just a few weeks ago.

11           The government's position on the scope of the injunction  
12 also sits awkwardly with its position on the merits. On the  
13 merits, the government wants consistency across government  
14 enforcement of this government-wide vaccine policy. Again, we  
15 have just heard MRFRA requires this statewide relief. And that  
16 was one of the reasons the Fifth Circuit upheld, in that case,  
17 a national injunction against the Biden administration. Here  
18 what we're seeking is a single-state injunction.

19           You have just literally parroted what the Fifth Circuit *en*  
20 *banc* majority described as an issue and a concern of *Feds for*  
21 *Med. Freedom vs. Biden* just a few weeks ago.

22           **THE COURT:** This one last sort of procedural  
23 question. Typically, one of the things I have to look at under  
24 Rule 65(c) is if there is going to be an injunction granted  
25 whether or not to impose some kind of security. I'm not sure I

1 really see a reason for a need to post security in this case.  
2 Is there any comment on that particular requirement of the rule  
3 if I, in fact, grant the relief the plaintiffs are seeking?

4 **MR. SHANNON:** Your Honor, may we confer briefly?

5 **THE COURT:** Yes.

6 **MR. SHANNON:** Your Honor, on behalf of the Attorney  
7 General, we don't see any need to impose security.

8 **THE COURT:** Okay.

9 **MR. SHANNON:** In the event the Court enters a PI.

10 **THE COURT:** All right.

11 Those are all the questions I had. Any other comments  
12 anyone wants to make before we wrap up?

13 **MR. WIEST:** None from the plaintiffs, Your Honor.

14 **MR. SHANNON:** None from the Attorney General, Your  
15 Honor.

16 **MR. BENTLEY:** Nothing further from Dr. Edney, Your  
17 Honor.

18 **THE COURT:** Here is what I'd like to do. I'd like to  
19 take a recess, it's about lunchtime anyway, and give this some  
20 thought and consideration, and, potentially, if I can, give you  
21 some kind of a ruling maybe this afternoon. Whatever I do, I  
22 am going to have to follow-up with a more detailed written  
23 order, but to at least give you a sense of what the outcome  
24 will be so you can plan accordingly.

25 I am going to take a look at everything and see if I think

1 I can be in a position to do that and then we can reconvene and  
2 I'll let you know at that time. Let's say we plan to reconvene  
3 at 1:30 this afternoon. All right. Court is in recess until  
4 1:30.

5 (RECESS TAKEN AT 11:55 A.M. UNTIL 1:39 P.M.).

6 **THE COURT:** For the record, the parties are all  
7 present, along with counsel for the parties. We're back on the  
8 record.

9 First of all, I want to compliment counsel for the parties  
10 in the manner in which they have briefed and presented and  
11 argued this matter today and in earlier briefing. The parties  
12 can rest assured they have all been well represented in this  
13 matter.

14 And the matter, of course, now before the Court is the  
15 motion for preliminary injunction. And, of course, I have  
16 considered the record in this matter, particularly the  
17 submissions of the parties and the evidence presented here  
18 today, along with the relevant legal authority.

19 As I indicated before, I will, within the next few days,  
20 enter a more fully comprehensive, detailed written order that  
21 will explain my reasons for the Court's ruling. But, I think  
22 in fairness, not to leave people in suspense, I am going to at  
23 least tell you what I'm going to do so you will have some idea  
24 going forward today what to expect.

25 As I said, I have considered the record in this matter.

1 And briefly, in summary, I am of the view that the motion for  
2 preliminary injunction should be granted. I am of the view  
3 that the Mississippi Religious Freedom Restoration Act does not  
4 operate to create an automatic option for religious exemptions  
5 to the state's mandatory vaccine law. Based upon the plain  
6 reading of the statute and standing alone, the vaccine law does  
7 not withstand strict scrutiny, and that as to anyone in  
8 Mississippi who has a sincerely held religious belief against  
9 vaccinating their children for school, the vaccine law violates  
10 the free exercise clause of the First Amendment without or  
11 unless it provides an option for requesting a religious  
12 exemption.

13 Further, the Court finds that for these similar reasons as  
14 applied to the plaintiffs, in this case it also violates their  
15 free exercise rights without providing an option for a  
16 religious exemption.

17 Accordingly, in the Court's view, because it is also the  
18 state, or the Attorney General's position, that Mississippi law  
19 through the Mississippi Religious Freedom Restoration Act  
20 already grants options for religious exemptions to all  
21 Mississippians, the Court is of the view that applying the  
22 injunction statewide amounts really to an incidental benefit  
23 and can be appropriately entered in accord with the recent  
24 Fifth Circuit decision, *Feds for Medical Freedom vs. Biden*, 63  
25 F.4th 366 from 2023.

1           Accordingly, the injunction shall direct that the enjoined  
2 parties shall develop and post on the State Department of  
3 Health website a process and any forms by which persons who  
4 wish to seek a religious exemption from the vaccine requirement  
5 may do so. I am of the view, for reasons I will detail more  
6 fully in my written order, that the injunction would not be  
7 directed to the Attorney General or the city prosecutor  
8 defendants in this case, that it is directed to and the  
9 enjoined parties shall be Dr. Daniel Edney, in his official  
10 capacity as the state health officer, and the named defendant  
11 school officials, that those are the parties properly enjoined  
12 in this matter.

13           Therefore, the Court will order that effective July 15,  
14 2023, the enjoined parties shall be enjoined from enforcing the  
15 compulsory vaccination law unless they have provided an option  
16 for requesting a religious exemption. By July 15, 2023,  
17 defendant, State Health Officer Dr. Daniel Edney in his  
18 official capacity, shall develop a process by which persons may  
19 request a religious exemption from the compulsory vaccination  
20 law, and it shall make that process or any forms related to it  
21 available on the State Department of Health website.

22           Thereafter, while the injunction remains in effect, a  
23 person may seek a religious exemption or request a religious  
24 exemption to the compulsory vaccine law by requesting such  
25 exemption pursuant to the process developed by the Mississippi

1 Department of Health. Based upon the statements of the parties  
2 today, and in accordance with Federal Rule of Civil Procedure  
3 65(c), the Court will not require the plaintiffs to post any  
4 security with respect to this injunction.

5 That will be the ruling of the Court in terms of the  
6 outcome just so you know where I am heading with it. There  
7 will be a more detailed order coming out in the next couple of  
8 days. Anything else at this time?

9 **MR. WIEST:** Not from the plaintiffs, Your Honor.  
10 Thank you.

11 **MR. SHANNON:** Nothing from the Attorney General, Your  
12 Honor.

13 **MR. BENTLEY:** No, Your Honor.

14 **THE COURT:** All right. Counsel, thank you very much.  
15 You are excused. This matter is adjourned.

16 (HEARING CONCLUDED)

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2 CERTIFICATE OF COURT REPORTER  
3

4 I, Sherri L. Penny, RPR, FCRR, Official Court Reporter  
5 for the United States District Court for the Southern District  
6 of Mississippi, appointed pursuant to the provisions of Title  
7 28, United States Code, Section 753, do hereby certify that the  
8 foregoing is a correct transcript of the proceedings reported  
9 by me using the stenotype reporting method in conjunction with  
10 computer-aided transcription, and that same is a true and  
11 correct transcript to the best of my ability and understanding.

12 I further certify that the transcript fees and format  
13 comply with those prescribed by the Court and the Judicial  
14 Conference of the United States.

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17 S/ Sherri L. Penny  
18 OFFICIAL COURT REPORTER  
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